Supreme Court, U.S.
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NO. 87-1457

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

D. K. HURLEY and
EUNICE JUSTICE,
APPELLANTS

vs.

WEST AMERICAN INSURANCE CO. of
THE OHIO CASUALTY GROUP and
THE OHIO CASUALTY INSURANCE COMPANY,
APPELLEES

An Appeal from
the Court of Appeals
of Franklin County, Ohio
Tenth Appellate District

JURISDICTIONAL STATEMENT

D. K. Hurley, and
Eunice Justice,
Appellants, pro se
1216 Highland Street
Columbus, Ohio 43201
Phone: 614-291-6256

(a) QUESTIONS PRESENTED

1. Whether the trial judge wrongfully took the case from the jury by giving a Directed Verdict on the major part of the Complaint and then controlled the outcome of the trial by giving his own instructions to the jury?

2. Were Appellants deprived of rights protected by the Seventh and Fourteenth Amendments to the U.S. Constitution when the Judge gave a "Directed Verdict" on the major part of the complaint instead of letting the jury decide?

3. Whether the Judge's "Directed Verdict" was supported by the evidence?

4. Whether the Jury's verdict was supported by the evidence?

5. Whether Plaintiff-Appellant's own counsel's behavior resulted in an obstruction of justice?

6. Whether Defense Counsel wrongfully influenced the jurors at their subconscious level by repeatedly making false and unsubstantiated accusations against appellants, and introducing false and contradictory testimony?

7. Did Defendants/Defendants' Counsel secretly contact Plaintiffs' witnesses and then used them to testify in their behalf?

8. Did Defendants/ Defendants' Counsel bribe witnesses?

9. Whether the trial court incorrectly applied the law to the facts of the case when:

a) it IGNORED the Statute of Fraud, and Destruction of Evidence/ Records?

b) it IGNORED the Bad Faith settlement?

c) it IGNORED Perjury?
d) it DENIED Appellants a New Trial?
e) it considered the Breach of contract?

10. Was the VERDICT of the trial court against the Appellants and for Appellees given under the influence of Passion, Prejudice, and or Confusion?

11. Whether the trial court's refusal to grant appellants a new trial constitutes an unconstitutional (under the Due process Clause and Equal Protection of The Laws provided in the 14th Amendment of the U.S. Constitution) or an unlawful or an otherwise improper denial of Justice of Discrimination against Appellants?

12. Whether the Franklin County Court of Appeals affirming the lower courts decision constitutes an unconstitutional (under the equal protection of the law clause provided for in the 14th Amendment of the U.S. Constitution) or an unlawful or an otherwise improper denial of justice or Discrimination against Appellants?

13. Was the Decision of the Court of Appeals affirming the lower courts decision given under the influence of Passion, Prejudice and/or Confusion?

14. Whether the Court of Appeals deprived Appeallants of their rights provided for in the First Amendment when they criticized and intimidated Plaintiffs for expressing their views of the wrongs that transpired in the lower court?

15. Whether the Trial Court deprived Appellants of their rights provided for in the First Amendment when, after asking if there were any objections to the Directed Verdict, refused to allow Plaintiffs to object?

15. Whether Appellees Policy limiting 1 year in which one can sue an insurance company is biased and unconstitutional?

16. Whether Ohio's Statute of Limitation is one year for suing an insurance company conflicts with Ohio Revised Code 2305.06 which has Statute of Limitations for suing under Contract Law is 15 years?

17. Whether Appellants had 4 years to file suit according to Ohio Revised Code 2305.09 since fraud was involved?

18. Whether the Statute of Limitation for filing suit is 12 years since Appellees had Breached their own Contract?

19. Whether the courts were biased against Appellants on the basis of their being from Kentucky and not natives of Ohio?

20. Whether Appellees conspired to obstruct justice by destroying evidence/records, fabricating evidence, stringing Appellants along by promising to pay/fraud?

21. Whether the Ohio Supreme Court's refusal to allow Appellants' Appeal to be heard on its MERITS constitutes an unconstitutional (under the DUE PROCESS clause and EQUAL PROTECTION OF THE LAW Clause provided for in the 14th Amendment of the U.S. Constitution) or an unlawful or otherwise improper denial of justice or Discrimination against Appellants?

22. Whether this case merits the closest and most exacting scrutiny because it involves the 1st Amendment right of free speech and expression; the 7th Amendment right of Jury Trial; the 14th Amendment rights of Due Process and Equal Protection of the Law?

23. Did or will Appellants receive direct injury as a result of this judgment?

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(b) LIST OF PARTIES

D. K. HURLEY and
EUNICE JUSTICE,
Plaintiffs-Appellants

vs.

WEST AMERICAN INSURANCE CO. OF
THE OHIO CASUALTY GROUP and
THE OHIO CASUALTY INSURANCE COMPANY
Defendants-Appellees

JURISDICTION

(e) (i) 28 U.S.C. §1257(2)

The Jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. §1257(2). The decision of the Franklin County Court of Appeals affirmed the lower court's judgment. The trial judge wrongfully took the major part of the case from the jury and gave a "Directed Verdict" and then controlled the outcome of the trial by giving his own instructions to the jury causing them to give an inadequate award. After asking if there were any objections, the trial judge refused to allow Appellants to voice their objections. Also, the Court of Appeals criticized and intimidated appellants for expressing their views of the wrongs done to them, depriving them of their rights of free speech and expression. The trial judge refused a new trial. The Supreme Court refused to review the case. All of the above deprived Appellants of freedom of speech and expression and trial by a jury of their peers, also due

process and equal protection of the law.

FIRST AMENDMENT

The jurisdiction of this Court is invoked pursuant to the provisions of the First Amendment to the United States Constitution. The court's action prevented Appellants' from the right of free speech.

SEVENTH AMENDMENT

The Jurisdiction of this Court is invoked pursuant to the provisions of the Seventh Amendment to the United States Constitution. The"Directed Verdict" on the major part of the complaint, and the Judge's control of the outcome of the trial by giving his own instructions to the jury deprived Appellants of a Trial by Jury.

FOURTEENTH AMENDMENT

The jurisdiction of this Court is invoked pursuant to the provisions of the Fourteenth Amendment to the United States Constitution. The trial judge wrongfully took the major part of the case from the jury and gave a "Directed Verdict", claiming there was no fraud when

there was. The trial judge refused to allow Appellants to object to his decision. The trial judge refused Appellants a new trial. The Court of Appeals affirmed the trial court decision--denying Appellants equal protection of the law. The Supreme Court of Ohio refused to review the case. Appellants were deprived of Due Process and thereby denied Appellants Equal Protection of the Law.

(ii) The Franklin County Court of Appeals filed their Decision and Entry on May 7, 1987. See Appendix . The Notice of Appeal was filed in the Supreme Court of Ohio on Dec.3, 1987. The Notice of Appeal was filed in the Franklin County Court of Appeals 2/16/88. See Appendix .

(g) STATEMENT OF THE CASE

INTRODUCTION

This is a case with the insurance company who had committed FRAUD and DECEPTION to prevent paying for storm, theft, vandalism, and water damages. Appellants purchased insurance

from the Appellees effective July 6, 1978 and continued to pay premiums until July 6, 1980 when Appellees canceled it because Appellants had damages which Appellees had not paid. The insurance was to cover any damages caused by fire, ALL PERILS, vandalism, theft. The property damage was to their own definition means physical injury to or of tangible property, including loss of use of the property. The insurance was on several properties located in Columbus, Ohio. Included in these properties were 2654-56 Adams; 75 E. Duncan; 2410-12 Glenmawr; 1212-1214 Highland; and 1216 Highland. Much damage and theft had been done. Appellees strung Appellants along, leading them to believe they would pay, but did not. Appellants submitted estimates, invoices, and cancelled checks.

There was much damage to 2654 Adams in 1978-79. The ceiling was damaged by water which required MUCH repair--plastering, painting, to match the rest of the room and adjoining living room. Tiles on the kitchen floor

were damaged by water causing them to turn up and had to be replace. On April 8, 1979, the house was vandalized--holes beaten in plaster, two doors broken in, windows broken out, screens torn out. A storm had also caused minor damage to the roof and gutters. Damage to the Adams property was $2,324.78 with two months rent loss. Mike Wolf, new adjuster, did not come out until May, when the work was almost completed. He led Appellants to believe they were being paid and told them to submit estimates, bills, and copies of canceled checks. Promise to pay and never did. He wanted to take Depreciation and suggested useing Mrs. Justice's labor in exchange. She refused. The policy only had $100 DEDUCTABLE. No Depreciation.

During the later part of January or first of February 1979, Appellants noticed their garage in the rear of 1216 Highland St. had storm damage. Lightening had struck in the ground where there were pipes and broke the foundation in many places causing the walls to

buckle and the building is collapsing. According to a telephone conversation Adjuster Jake Turner inspected in March, 1979. He said he was getting an estimate and told Appellants to. The last estimate Appellants got was for $20,000 to replace garage. Turner went to Hamilton, O. Office last of March 1979. Mike Wolf replaced Turner the first of April 1979. GARAGE claim NEVER denied. Appellants have lost app. $8,500 in rent and are still losing.

In August, 1979, someone broke into the locked Attic at 75 E. Duncan, where antiques were stored and took antique end table, coffee table, lamp stand stbles, floor lamp. Cost to replace antiques and repair damaged building is $1,130 (Tr.pp. 84-87) Police report taken. This was reported to Appellees, but no one came to check it. Wolf promised to pay for damage t building without looking at it but claimed contents not covered. He paid nothing.

During the later part of August, 1979, a storm damaged the roof at 2410-12 Glenmawr to require replacing. The tenants at 2410(who had livedthere 2 yrs.) were at the movies durin

storm. When they returned, they found shingles all over the yard, water running down the stairs, plaster had fallen-3 rooms, hall and bath, and some electrical damaged. In the spring, prior to the storm, during a hard raing, Pl. had called tenant to check in the attic for leaks. He found none. Still waiting for the adjuster, a couple of weeks later, Appellants had temporary repairs made on roof with shingles and roofing cement, but the holes were so bad it did not hold and shingles kept blowing off. Mike Wolf, Adj., never viewed the interior and waited til April 1980--8 mo.later--to view exterior,but never went on the roof. While there he talked with Dick Baker's men who were there to get an estimate. After their meeting, they all claimed the building was rotten. Wolf called and denied the claim and then abruptly slammed the phone down in Mrs. Justice's ear. The roof was replaced in June, 1980 by J. F. Baker & Son--no wood had to be replaced. After replacing the roof, Wolf claimed no storm & roof was old and deteriorating.

Cost to repair storm damage was $4,284.50.

In the spring of 1980 Bill Hunt broke into the room over the garage at 1212-1214 Highland and removed Antiques stored there--walnut desk, three milking stools, cracker box, and damaged electric. After Hunt promised the police he would pay for the damaages, he disappeared. Jack Hatfield saw Hunt push the desk into the alley and burn it. When this was reported, Appellees said it was just like Duncan --not covered, although their policy claimed it was covered anywhere in the world. Appelles canceled insurance eff. July 6, 1980.

From the date of the first damage, Appellants kept calling and writing Appellees. Updated estimate on Garage as prices increased, Trying to get pay promised for damages at Adams, Duncan and 1216 Highland. After 1212-14 Highland & Glenmawr was denied, Appellants wrote OHIO DEPT. OF INSURANCE, but in court by the time they responded. Appellees never requested a PROOF OF LOSS statement, but four months after Complaint filed, Wolf, the adj., set up ar

appointment with Mrs. Justice, who was not a party of the action at that time and he offered her a check of $200 for the damages to the building at 75 E. Duncan and tried MANY times to get her signature on the PROOF OF LOSS, but she refused to sign. Mike Wolf said he was willing to work out a settlement of $739.22 on Adams, but he only brought a $200 check.

PROCEEDINGS BELOW

A. First Trial

This action was filed by D. K. Hurley in the Franklin County Court of Common Pleas, Columbus, OH. Eunice Justice joined as a party of the action 7 months later, March 1981.

The first trial was tried to Judge Rader and lasted parts of 3 days. The opinion is published at 84-)P-2377.

Judge Rader REFUSED a Jury Trial. He found for Defendants together with costs. Judge Rader overruled Plaintiff's move for reconsideration.

JUDGE RADER'S BIAS

An attorney attacked Appellants after the trial while they were packing to leave, claiming they caused his clients from Texas 3 days delay. When the bailiff returned to the court room, he heard part of the conversation and threatened to call the police on appellants. Mrs. Justice tried to reach Judge Rader to explain but was unable to. A person in his chambers indicated the judge was ruling against Appellants due to the attorney's attack.

FIRST APPEAL

The court of Appeals granted a new trial because Judge Rader had refused a jury trial.

SECOND TRIAL

The second trial was tried to a jury and lasted 3 days. The Court of Appeals opinion is published at 87-OP-731.

Judge Reda gave a "Directed Verdict" stating "...no evidence in this case of any intentional fraud, misrepresentations, or what have you." He also gave "Directed Verdict" re: garage at 1216 Highland in favor of Appellees.

After Judge Reda gave the Directed Verdict on the major part of the trial, he gave his own instructions to the jury. Therefore, he effectively took the case from the jury. With the control of the judge the jury only awarded Appellants $2,355 for the balance of complaint.

JUDGE REDA'S BIAS

The goals of the Court of Common Pleas was to reduce Appellants' claims and deny money damages. The Goals also was not to change Judge Rader's decision on Fraud.

Appellants' case was deliberately sabotaged by their own attorney who refused to submmit vital evidence and Cross Examine witnesses. She failed to use previous testimony on Cross Exam. She called some witnesses on Direct when they whould have been on Cross Exam. By slip of the tongue, Judge Reda even said one witness would be called on Cross Exam and she called her on Direct. She failed to object several times when necessary. At one point Plantive tried to object, but not permitted.

Judge Reda should have declared a MISTRIAL

because he was fully aware of the mistakes Plaintiffs' attorney was making.

Judge Reda allowed defense counsel's misconduct. Defense Counsel made false and unsubstantiated accusations against Plaintatiffs throughout the trial, such as he claimed they had not filed claims; had not submittted estimates, canceled checks, invoices, bills; did not have antiques; claiming for furniture held for rental property instead of stored antiques. He asked leading questions. Brought witnesses he knew gave false testimony at the first trial. He read into the record testimony of a witness who testified at the first trial, knowing it to be false & knowing this testimony indicated bribery. Put witnesses on the stand who gave false and contradictory testimony. Adjuster Mike Wolf testified all claims are still open. Tr. p. 456, L. 18. After Pl. attorney informed Judge Reda the Garage claim had never been denied, the defense counsel brought Jake Turner, the former adjuster who left the Columbus office last of March 1979

and asked him leading questions, having Turner testify he viewed the garage in May 1979 and met with Mrs. Justice in June and denied the claim. Defense Counsel submitted fabricated evidence regarding the garage.

Judge Reda should have declared a mistrial because he was fully aware of the mistakes Defense Counsel was making.

Judge Reda was fully aware of Defendants' destroying their records and did nothing about it. Plaintiffs had subpoened records, but learned in court they had been destroyed. Defendants had no records on either garage. Defendants had no estimaates, copies of canceled canceled checks, bills, or Certified Letters that Plaintiffs had mailed on either claim. They only had records on four (4) claims they took by phone. TR. pp. 474-480.

Judge Reda did not consider the tampered evidence when he gave the "Directed Verdict",

Judge Reda knowing the Appellees Policy had a one year statute of limitation to file suit unless fraud could be shown and that gave

four years to file suit, refused to rule there was fraud involved, even though he knew there was false and contradictory testimony, tampered evidence, and records destroyed; knew Defendants had strung Plaintiffs along, leading them to believe their claims would be paid. Judge knew that Defendant's witness claimed the garage had been damaged by freeze and thaw when there was no mud in the breaks. Knew that Pl's expert witness, an Ohio State University Professor in construction,testified it could not be from freeze and thaw, but the most likely possible cause was lightening. He knew that the testimony of two of the Def.'s witnesses indicated bribery.

Judge Reda knew Def. Counsel and Def. contacted Plaintiffs witnesses without Pl. knowledge and got them to testify falsely for Def. JUDGE Reda did nothing about it.

Judge Reda was fully aware that Defendants did not abide by their own rules and requirements of the policy---did Breach their own contract, which he did not consider in his decisio

Judge Reda was fully aware of Bad Faith settlement and did not consider that in his "Directed Verdict".

When Judge Reda gave the "Directd Verdict", he never quoted any law to justify the verdict, but told what he would have done.

While waiting for the Jury's verdict, Judge Reda and Defense Counsel sat in his office and told jokes about the people from Kentucky and W. Va., because Appellants are from Kentucky. Def. Counsel claimed he use to work at the toll bride at Portsmouth and he laughed at the people from Ky. and W. Va. going down there on holidays and week ends. When Plaintiffs went into the office, Judge Reda, a Republican, said he had to stay on the good side of the Democrats. Both Counsels were Democrats.

Post Trial Motions

After the trial, Appellants' attorney, who was trying the case on contingency, promised to file for a New Trial or appeal if not granted. Instead, she went on vacation. After learning she was gone, Appellants filed a

pro se" motion for a New Trial which was denied.

Still unable to reach their attorney, Appellants timely filed notice of appeal to the Franklin County Court of Appeals.

The Appeal

On May 7, 1987 the Court of Appeals affirmed the lower court's decision. See Appendix ——. Opinion is published at 87-OP-731.

Appellants filed a brief and reply brief. As at the trial Appellees attorney continued making false and unsubstantiated accusations in his reply brief. He did not order a copy of the transcript and made NO citations. As in the lower court he deceived the court by stating Appellants sued for $14,515.44. Plaintiffs originally demanded a judgment of:

> "$14,515.44 plus interest, court costs expended herein, reasonable attorney fees and unforseen damages and increase cost of work as a result of the foregoing damages."

After 1st trial on 4/30/85 it was Amended to:

> "...$800,000.00 for compensatory, punative and special damages with interest from date of judgment, costs to the plaintiff and reasonable attorney fees"

because there had been much more fraud and deception and bad faith settlement after the first complaint, starting with Mike Wolf's attempt to get Appellants' signature on PROOF OF LOSS with a $200 check, secretely contacting Plaintiffs witnesses instead of deposing them, and the apparant bribery according to Paul Fleming's and Dick Worch's testimony, the problems had with attorneys because of Def. and perjury. Appellees did all to prevent paying the claims. Appellees did NOT object to the Amended Complaint.

In Appellees Statement of the Case, he acknowledges that the claims were filed on all of the losses, but had denied that in trial court.

COURT OF APPEALS BIAS

With nothing in the Reply Brief to refute the Brief, the Court of Appeals affirmed the Trial Court's Decision. KNOWING from the Brief that Mike Wolf, Adjuster, testified, "ALL CLAIMS STILL OPEN". TR. p. 456, L. 18, the Court of Appeals ruled:

"Arguably, the evidence in the case at bar reasonably shows the plaintiffs may have been led to postpone the commencement of the suit beyond the twelve-month period because of defendants' settlement offers regarding the other four claims. Even construing this evidence most strongly in plaintiffs' favor, there is simply no showing that this conduct evinced recognition by defendants of any liability on the claim for lightening damage to the garage."

KNOWING the Appellants gave LAWFUL reasons for a New Trial, the Court of Appeals stated:

"...As support for this contention, plaintiffs cite the various reasons set out in Civ. R. 59(A)(1)-(5), (7) and (9). Although plaintiffs set out separate arguments regarding each of these subsections of the Civil Rule,we will consider them together. The decision of a trial court is solely within its sound discretion...."

KNOWING that Appellants had stated the facts of what transpired in the lower court regarding Perjury and KNOWING Perjury can obstruct justice and destroys credibility of a witness, the Court of Appeals BELITTLED Appellants:

"...The right to pursue an appeal is not a license to engage in self-indulgent behavior or to belittle opposing parties. In short, Pls' right of appeal also demands that they respect the integrity of all persons who use the courts, whatever the basis for their appeal.[1]

"Moreover, plaintiff's allegations that

> defendants perjured themselves at trial is not a ground for appeal. The appropriate sanction for perjury is a criminal action pursuant to R.C. 2921.11..."

The Court of Appeals fully aware of the fraud, deception, perjury, bad faith, breach of contract, so they should have reversed the lower courts decision of the "Directed Verdict" and enlarged the award/granted a New Trial.

Appeal to the Ohio Supreme Court

Appellants timely filed Notice of Appeal to the Ohio Supreme Court, and filed their Memorandum in Support of Jurisdiction. The Court overruled their motion. It is published in the Bar Report Vol. 60, #45, p. A4.

Appellants submit that they are being denied Freedom of Speech and Expression,trial by jury, due process and equal protections of the law because the judges are prejudice.

> "One who intentionally withholds or destroys tangible "evidence" which he knows to be target of grand jury investigation can reasonably be said to be one who 'corruptly'**obstructs, or impedes, or endeavors to influence, obstruct, or impede the due administration of justice***within this section.'" U.S. V. Walssek, C.A.Pa. 1975, 527 F.2d 676

"The Court concluded that since this was a suit for the BREACH OF THE INSURER'S CONTRACT... the 5-year provision in the title policy was NOT applicable. Ruling that the policies were specialities and thus subject to a 12-year statute of limitation,which had not expired at the time of this suit, the court determied that the trial court had ERRORED ingranting Summary Judgment to the Def. insurer on its pleas of limitation." Leonard v. Standard Acci. Ins. Co1: 96 ALR 2d 1193.

"91976) Where insured brings action against automobile insurer for bad faith in defending a damage claim against the insured, such action is governed by the 15-yr statut of limitations for breach of contract: Wolf v. Cont. Cas. Co., 529 F 2d 98 (6th Cir)

(h) THESE QUESTIONS PRESENTED HEREIN ARE SUBSTANTIAL QUESTIONS REGARDING THE FREEDOM OF SPEECH, EXPRESSION, TRIAL BY JURY, DUE PROCESS AND EQUAL PROTECTIONS OF THE LAW.

These questions are substantial enough to merit the plenary consideration of this Court with Briefs and Oral Argument.

The loss of First Amendment rights itself constitutes irreparable injury. Elrod v. Burns 427 U.S. 347 (1976); 414 Theater Group v. Murphy, 499 F. 2d 1155 (2d Cirl, 1974).

The Supreme Court will review or independently determine all questions on which a federal right is necessarily dependent. U.S. v. Pink, N. Y. 1942, 92 S. Ct. 552, 315 U.S. 203,86 L.Ed

796.

Whether a state has denied petitioners any rights under the Federal Constitution is for the ultimate decision of the Federal Supreme Court, but what restraints the state has imposed are for the state Supreme Court to determine. Hotel & Restaurant Employees' International Alliance, Local No. 122 v. Wisconsin Employment Relations Board, Wis. 1942, 02 S. Ct. 706, 315 U. S. 437, 86 L. Ed. 946.

Where New York Court of Appeals made its determination on authority of McKinnery's N.Y. Religious Corporations contention that such sections, as construed, violated U.S.C.A. Cont. Amend. 14§1 the Supreme Ct. won appeal to it would determine the constitutional issue on the Merits. Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. America, N.Y. 1952, 73 S. Ct. 143, 344 U.S. 94 L. Ed. 120.

Judgement of State Supreme Court, affirming lower court's judgment refusing to set aside Department of Public Works' order on the ground that it deprived railroad of property in vio-

lation of DUE PROCESS clause of U.S.C.A.Const. Amend. 14 was reviewable by the Supreme Court writ of error. Northern Pac. Ry. Co. v. DEPARTMENT OF Public Works of Washington, Wash. 1925, 45 S. Ct. 412, 268, U.S. 39, L. Ed. 836.

Sweep of 18 USCS §241 is not confined to rights expressly defined in Constitution, but inludes those rights judicialy determined to be fundamental and embraced by implication within Equal Protection clause of the fourteenth Amendment. U.S. vs. Anderson (1873, CA 4 WVa)

C O N C L U S I O N

For the foregoing reasons in this Jurisdictional Statement, the court's "Directed Verdict" should be reversed and the "jury's" limited award be enlarged. This case merits plenary consideration by the Supreme Court.

Respectfully Submitted,

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IN THE FRANKLIN COUNTY COURT OF
COMMON PLEAS, COLUMBUS, OHIO

D. K. HURLEY, ET AL
Plaintiffs

vs.

CASE NO. 80-CV-08-4322
JUDGE REDA

WEST AMERICAN INSURANCE &
OHIO CASUALTY INSURANCE
Defendants

JUDGE REDA'S ORAL DECISION

COURT: I CAN'T REMEMBER what the testimony was right at the moment with regard to the loss. It seems to me the testimony was that they intended to increase the rent, but they felt that they couldn't because the property was damaged, but that they were still receiving the present rent.

WHERRY: That was on the Glenmawr property, because there was a tenant occupying the property at that time. The vandalism occurred 4 or 5 days after the tenant moved out.

COURT: Now, 1st of all, I am going to sustain your motion for a Directed Verdict on that count in the complaint that alleges fraud. There is no evidence in this case of any intentional fraud, misrepresentations, or what have you. Now, I am also going to sustain the Def.'s motion for a Directed Verdict on the Pl's com-

plaint alleging that the garage at 1216 Highland was damaged by lightening.Now the reason for my sustaining the Def's motion is that I have examined the policy of insurance. And the policy of insurance states very clarly that any lawsuit brought against the Defs. by reason of the occurrence, any occurrence that may cause damage to the insured premises, must be brought within one year. And I have researched this matter and I find that these provisions are not against public policy. They are enforcible. The evidence was uncontroverted in this case that this occurrence must have happened sometime before March of 1979. I DON'T KNOW WHEN, whether it was the previous October of 1978 or the previous March of 1978. But in any event, Mrs. Justice said that she discovered this damage in March of 1979, and reported it to the insurance company. The lawsuit was not brought until August of 1980, which is certainly beyond the year limitation. Now, I haven't heard anything in the evidence to suggest that the insurance company strung her alon

as far as payment or settlement and lulled her into a false sense of complacency about this whole matter for the purpose of getting the statute of limitations contained in the insurance policy to run. And so, on the strength of that what I am going to do is sustain your motion for a Directed Verdict with respect to the garage at 1216 Highland.

Now, if I am not mistaken, you also made motions for a Directed Verdict with regard to the property that was stolen from Duncan, and the property that was stolen or destroyed from1212-1214 Highland. Now, I am going to overrule your motion for a Directed Verdict on that and instruct the JURY that if they find that that property was indeed your personal property and it was being stored at Duncan, or 1212-14 Highland, and that there was no intention on your part to use that property in your rental properties to replaceold furniture, or you were going to use it, then there would be coverage. There would be coverage under your homeowner's policy, which provides that your personal property is covered

theft wherever it may be located anywhere in the world. So the Jury is going to have to make the decision as to whether or not that property was personal property that was just being stored there, and not intended to be used in your apartments, or whether or not it was simply furniture that you had there that you intended to use in your apartments. And they are going to have to determine by a preponderance of the evidence what value to attach to those. Mrs. Justice testitied that in her opinion they were worth so much. She had a witness who testified and this was her own witness, that he couldn't place a value on them as antiques unless he actually saw them, and he didn't see them. So what he did, he put a different value on them. There is evidence as to what you estimated their value to be in your report to the police.

The Jury is going to have to review all of the evidence. They are going to have to make a determination as to the value.

Now, did I miss anything? I CAN'T REMEMBER.

MRS. WHERRY: Your Honor, I would like to

object on the motion to sustain on 1216 Highland, on the basis that the Defendants' claims adjuster, Turner, did not get back to Mrs. Justice during the one year that was running, and she attempted to contact him and had no contact with him, concerning whether or not the claim would be allowed. The last information she had was that he was obtaining additional estimates concerning the porperty, and she was under the impression that the damage was going to be allowed, which is why she submitted her own estimate approximately eight or nine months later, because he had not contacted her concerning that claim.

COURT: Well, you know, if I have a policy of insurance with an insurance company, and I report a loss to my insurance agent, and he doesn't respond to me and I was aware , as one should be, of the one-year limitaion in the contract, what I would do, I would make every effort in the world to get a hold of my insurance agent, claims adjuster, whoever it might be and tell them what are you going to do?

And if I have got no favorable responce, what I would do, I would file my lawsuit within the yr. I understand, Counsel, that you are making an Objection, but your objection is Overruled.

MRS. JUSTICE: May I object and say why?

COURT: Well, Mrs. Justice, I hate to tell you no, but it won't make any difference. Because what I have done, I have sat here and I have listened to the evidence very carefully. I have read the policies. And you wouldn't persuade me otherwise.

MRS. JUSTICE: May I try?

COURT: I don't think so. You see, that is why people have attorneys. They have attorneys so the attorneys can do their talking for them. The clients are not permitted to, you know, ask questions or make arguments or anything like that. You could if you weren't represented by an attorney. But inasmuch as you are, I am going to have to deny your request to even try.

Bring the Jurors in. TR. pp. 619-620.

(NOTE: COURT REPORTER DID NOT TAKE THE INSTRUCTIONS TO THE JURY.

IN THE COMMON PLEAS COURT OF FRANKLIN CO.,O

D. K. HURLEY et al,
Plaintiffs

vs.

Case No: MOCV-08-4322
JUDGE REDA

OHIO CASUALTY, et al.,
Defendants

JUDGMENT ENTRY

This matter came on for Jury Trial on Feb. 5, 1986. At the conclusion of the evidence and upon a motion by the def., The Ohio Casualty Ins Co. & The W. American Ins. Co., a Directed Verdict was granted to said Def. upon the the issue of property damage done to a garage located at 1216 Highland St., Furthr, a Directed Verdict was granted to the Def on all Allegations of fraud or bad faith contained in the complaint.

Testimony was concluded and this matter was submitted to the Jury based upon a property damage claim at 2654 Adams Ave., property damage and theft claims at 75 E. Duncan, and property damage at 2410-12 Glenmawr and theft claims in the garage at 1212-14 Highland St.

Upon the consideration of the evidence and the exhibits entered into the record, the Jury entered a verdict in favor of the plaintiffs and

Filed March 6, 1986 APPENDIX 7

and against the Def. in the amount of twenty-three hundred and fifty-five dollars ($2,355.00).

Therefore, judgment is hereby granted in favor of the pl. D. K. Hurley and Eunice Justice and against the Ohio Casualty Ins. Co. and the W. American Ins. Co. in the amount of Twenty three hundred and fifty-five dollars. ($2,355.00).

IT IS SO ORDERED.

Judge Frank J. Reda

Judith Wherry (WHE10)
2066 West Henderson
Columbus, Ohio 43220
(614) 299-9608
Attorney for Plaintiffs

Andrew S. Adams(Ada08)
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136 West Mound Street
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(614) 464-2392
Attorney for Defendants

IN THE COURT OF COMMON PLEAS, FR. CO. O.

D. K. HURLEY, ET AL.,
Plaintiffs

vs.

CASE NO. CV-08-4322

WEST AMERICAN INSURANCE and OHIO CASUALTY INSURANCE CO.
Defendants

JUDGE REDA

MOTION FOR NEW TRIAL

Plaintiffs move for a NEW TRIAL according to RULE 59 (A), (1), (2), (3), (4), (5), (7), (9) of the Ohio Rules of Civil Procedure and other questions of LAW, which are explained in the following MEMORANDUM.

_____ and
D. K. HURLEY

_____
EUNICE JUSTICE
1216 Highland St.
Columbus, O. 43201
Phone: 614-291-6256

MEMORANDUM

1. Plaintiffs move for a NEW TRIAL according to RULE 59(A) 1, 2, 3, 4, 5, 7, & 9 of ORCP and other questions of LAW. Def. did submit IMPROPER EVIDENCE when they submitted the "statement" from Paul Fleming which was billed to Eunice Justice. According to the letter from Mike Wolf, dated Dec. 15, 1980, he did NOT

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HAVE A FILE ON THE Garage at 1216 Highland ST. Columbus, O. 43201. The four claims that he has mentioned in that letter were: Adams, Glenmawr(yet denying Glenmawr claim) and two separate claims on Duncan.Testimony reveals that there are two claims on Duncan--one for vandalism and the theft under Home Owners. Defendants had removed their file with a claim pending. (The 4 claims above & both garages were in Complaint.) When Corroon and Black finally brought in their records, they did NOT have a on the Garage at 1216 Highland St., Columbus, 43201, although Plaintiffs' CERTIFIED LETTERS THAT Corroon and Black signed for reveal the the CLAIM HAD BEEN FILED. DEF. HAD TAKEN out their files on the Garage at both offices. Destroyed records. The following paragraphs under number 2 reveal the Paul Fleming was NOT on the premises at 1216 Highland St., May 23, 1979. The following paragraphs are realledged and incorporated here as argument in order not to be repetitious.

APPENDIX 10

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"A new trial should be granted where IMPROPER EVIDENCE is admitted, and of such a character that it might have influenced the JURY: Blackburn v. Blackburn, 8 O 81.

IMPROPER EVIDENCE influenced the Court causing DIRECTED VERDICT Submitted EVIDENCE AFTER DESTROYING THE FILES. Andy Adams kept harping abt. the letter that was mailed in March 1980 as if that was their first knowledge of the claims.He did submit the 1979 letters, but attempted to take them back when they were to beadmitted by the court. However, the Court did see that they had been submitted and accepted them. A new trial should be granted because of IMPROPER EVIDENCE.

2. A FAIR TRIAL WAS PREVENTED BY FRAUD AND IMPOSITION A new trial should be granted according to Hayward v. Calhoun, 2 OS 164.

According to Mike Wolf's letter dated Dec. 15, 1980 which is in the EXHIBITS, West American Ins. and O. Cas only had FOUR (4) CLAIMS in in their FILES. Those claims wer Adams, Glenmawr, which Mike Wolf was denying, and TWO (2) on Duncan. According to testimony one claim on Duncan was for vandalism and the other claim was

filed with Home Owners. According to his letter he did not have a file on the garages at 1216 and 1212-1214 Highland St. even though a Complaint had been filed in court on both.

Corroon and Black, Pl.'s agent, did NOT hav a file in their record on the two garages located at 1212-1214 and 1216 Highland St. NO FILE AT THE AGENTS AND NO FILE AT THE CO. NO F

A subpoena was issued Jan. 21, 1986 to "An Burkhart or any other qualified person to bring the records" for 75 E. Duncan; 2654-56 Adams; 2410-12 Glenmawr; 1216 Highland St., 1212-14 Highland re: claims the D. K. HURLEY & EUNICE JUSTICE filed with the W. Am. Ins. Co of the Ohio CasThe Court had to threaten to send the Sheriff before CORROON & BLACK responded to the SUBPOENA. However, when they came, they did NOT bring the complete record. CB had NO RECORD for the GARAGE at 1216 Highland St., Col. O. 43201. CB had NO RECORD for the destruction of the ANTIQUES at the GARAGE at 1212-14 Highland St., Col. O. When Mrs. Justice, Pl., called Corroon and Black, she

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talked with Richard Lee who labeled himself as the qualified person in charge of records. Judith Wherry would not put him on the stand. Eunice Justice had asked Mrs. Wherry to put Richard Lee on the stand and label him HOSTILE since he was so HOSTILE on the phone and had to be threatened to send the sherriff to bring him in. Richard Lee should have been questoned as on CROSS EXAM. Plus on JAN. 28, 1986 (PARTS) Richard Lee had MAILED COPIES of the file which had been exhibited in court and testimony regarding these ex and letter.

Although the subpoena had designated the "qualified person to bring the records.", Richard Lee brought Anne Burkhart, who did not keep the records in her office. Judith Wherry, knowing that Anne Burkhart did not keep the re_ KNOWING that Richard Lee had mailed copies of the EXHIBITS Jan. 28, 1986; KNOWING that PL. wanted Richard Lee on the stand under CROSS EXAM, REFUSED to put Richard Lee on the stand KNOWING THAT HE DID NOT BRING ALL THE RECORDS.

Then put Anne on DIRECT!

Eunice Justice, Pl., attempted to present this plus other things that were not goingright to the Court but was NOT ALLOWED. The Court said something to the effect since she had an attorney to speak for her, not knowing what was transpiring! The records that Corroon and Black brought was a page taht they use to take reports by phone. One page for each location of 2654-56 Adams; 2410-12 Glenmawr; and for the 2 claims on 75 E. Duncan. NOTHING on the 2 Garages at 1216 Highland and 1212-14 Highland. They did not have the CERTIFIED LETTERS that they had signed for and that Def. had EXHIBITED. RECORDS HAD BEEN DESTROYED. TAMPERING EVIDENCE is in VIOLATION with REVISED CODE §2921.12 which states:

> "(A) No person, knowing that an official proceeding or investigation is in progress or is about to be or likely to be instituted, shall do any of the following: '(1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence insuch proceeding or investigation; (2) Make, present or use any record, document, or thing, knowing it to be false and with purpose to mislead a public official who is or may be engaged in such proceeding or investigation, or with purpose to corrupt the outcome of any such proceeding or investigation.' (B) Whoever vio-

lates this section is guilty of TAMPERING WITH EVIDENCE, a FELONY of the 3rd degree."

With NO RECORD AT W. Amer. and NO RECORD AT Corroon and Black of the Garage at 1216 Highland St., did not stop Jack Turner from "just happened to have record of the garage IN HIS POCKET." Without Pl.'s knowing that the records HAD BEEN DESTROYED, Def.'s may be able to get by with their "PADDED EVIDENCE" and "FALSE TESTIMONY". There had never been any record anywhere that the garage claim had been denied. In fact, during this second trial, A. Adams attempted to twist the testimony that the damage occurred in 1977 when Terry McLane was not sure about the date. Pl.'s RENT RECEIPT BK., which Judy Wherry REFUSED to submit into evidence shows that Terry McLane paid his rent July 24, 1978 for his JULY 1978 rent. The RENT RECEIPT BK. reveals that Terry (Ted) McLane was not back to pay the rent until 3/13/79 and at that time he paid August 1978 rent. Ted's testimony was that it was warm weather when he was there and it was spring

when he came back. Had the claim been denied they would not worry what year it was! All they needed to do was submit the records, but the RECORDS WERE DESTROYED! Instead of showing the records that the claim had been denied, WHICH IT HAD NOT, Def. brought in Paul Fleming who was NOT on the premises in May 1979.

J. Turner claimed just happened to deny the claim verbally June 1979. Had he done that it would have been in the records. But, THE RECORDS WERE DESTROYED. Had the claim been denied Pl., Eunice Justice, would not still be getting ESTIMATES. On 8/15/79, Pl. got an estimate from SLATE CONSTR. CO. She also got an updated one in 1981. Her Complaint had asked for increase in costs. Had she met with J. Turner, she would not still be calling the office to learn the status of the claim. The TAPE RECORDing of 12/22/80 reveals that Mrs. Justice asked M. Wolf about the GARAGE. Why would she still be asking 4 mo. after the complaint was filed if the claim had been denied? Judy Wherry

REFUSED to submit the Tape Recording which was submitted in the 1st trial. Pl. wanted to inform the court about the tape but not allowed. — More Fraud and DECEPTION was revealed in J. Turner's testimony. According to J. Turner he inspected the inside of the garage at 1216 Highland St. in March of '79. Yet his own testimony reveals that he was NOT inside the garage. Turner could not describe anything inside the garage, because he was not in it, but Ted McLane's car was parked inside the garage--WHICH HE DID NOT SEE, but claimed he was in the garage. Shelves were on the wall, as pictures shows,--WHICH HE DID NOT SEE. Turner could not tell how much the foundation had buckled in. Claimed it was More than 1", less than 3'. Some Discrepancy! HE DID NOT SEE IT! Turner did not know if the walls were straight or bowed. HE DID NOT SEE IT! Turner did not know if walls were anchored to FOUNDATION DID NOT SEE IT! Turner's Exhibit of Estimate of damages from Paul Fleming was ad-

dressed to Eunice Justice, 1216 Highland St. Col., OH 43201. Mrs. Justice was billed for $20. The above EXHIBIT, when there were NO RECORDS on the garage at Corroon & Black or W. Amer. Ins. RECORDS DESTROYED! Turner did NOT have proof that he had denied the claim. Claimed it was VERBAL. Mrs. Justice saw Turner for the 1st time in the court Feb. 1986. If Turner denied the claim, Mrs. Justice should have known about it. She did not. Had Wolf replaced Jack Turner in June 1979??

Mrs. Justice got estimates 2 mo. after he claimed to have denied it. Turner CLAIMED he was in the garage, but could not tell anything about the garage, but claimed he denied the claim in June 1979. How can he have perfect memory on one thing and forget everything else? The reason Turner claimed to have denied the claim in June 1979 would put it more than a year for Pl. to file their COMPLAINT. They have 4 YEARS WHEN FRAUD & DECEPTION is used. Pl. were NEVER DENIED THE CLAIM. Turner was

going to get an ESTIMATE of the price for Repairs. That was what they had Pl. waiting for.

Turner did not meet with Mrs. Justice when he looked at the garage, from the OUTSIDE, because he did not get in the inside, so WHY WAS the RECORD DESTROYED?? §2305.09 4 Yrs: Certain TORTS. "A) For trespassing upon real property; B) For the recovery of personal property, or for taking or detaining it; C) For RELIEF ON THE GROUNDS OF FRAUD:

Plaintiffs had 4 Yrs. to file on the Gr. of Fraud. Def. did lead Pl. to believe they were going to pay. They did not deny the claim Said nothing. Now RECORDS DESTROYED. FALSE TESTIMONY.

PAUL FLEMING

Paul Fleming testified that he was at 1216 Highland St., 5/23/79 and inspected the garage but testimony PROVES he was not.

Paul Fleming claimed to be at 1216 Highland St. but he did NOT know the Type of FOUNDATION. He claimed CEMENT FOUNDATION. He changed to

BLOCK FOUNDATION. Fleming did not know HEIGHT of FOUNDATION whether it was the same height on the alley as on the rear. He testified that it was old damage because the break (cracks) were not bright. Had it been Freeze & Thaw which he testified caused the damage, mud would have filled the cracks & he could not tell whether bright or dull. Small pictures taken in '80 shows bright or new break in the wood. These pictures were submitted the 1st trial. Fleming testified there was NO WATER STANDING. NO MUD. That destroyed his testimony of freeze/thaw damage, because there would have been LOOSE DIRT.

Fleming testified that the garage was "NOT IN GOOD REPAIR". He could NOT remember if there if there were shingles off or not because he just went out to check if there was a storm. By not being in good repair, he mentioned it needed paint. PICTURE taken the yr. before (in color) shows the Garage Painted, new Roof, New Gutters & New Downspout. Walls

STRAIGHT the Yr. before. See B&W picture after damage. Walls BOWED. Fleming did not know if the walls were straight or bowed. He had not seen it. Fleming did not know if walls were anchored to Foundation. Had not seen it.

Fleming was brought in in the 1st trial as an EXPERT WITNESS. Apparently that was what they were attempting in the 2cd trial, because he was giving his EXPERT OPINION of what caused the damage. Fleming did not have previous education to qualify him as an expert. According to statement he brought in, he ran Grove City Home Repairs. Previous employment, according to his testimony, he worked in a Lumber Yard. Not any of the above qualifies him as an expert in soil, lightning damage. Fleming testified he had NEVER seen foundation damaged by lightning. The pictures shows metal pipes in the ground & one used in installing a clothes line. That metal could have drawn the lightning.

The statement that Fleming brought

was addressed to Eunice Justice, not to W. Amer. Had he been employed to do an estimate in May 1979 he would have had W. Amer. name & address. Address statement to them for $20. Presenting a statement addressed to Eunice Justice is not sufficient evidence that he was there, especially when W. AMER. & Corroon and Black both had DESTROYED THE RECORDS for 1216 Highland. NO RECORDS. They did not even have the CERTIFIED LETTERS THAT Mrs. Justice had sent. No. Records. Andy Adams, Att. for Def. was running around with the March 1980, ignoring the rpts. sent in in 1979 by CERTIFIED MAIL. Adams even attempted to remove the 1979 Exhibits. that had been submitted, but Judge Reda held on to them, & admitted them. They had been admitted the 1st trial also.

Fleming had never seen a foundation previously damaged by lightening.

Def. had been complaining that Pl. did not get estimates. Then changed that it had been denied.

Dr. Richard Larew who had EXPERT QUALIFI-

CATIONS: PH.D Degree, Education in CONSTRUCtion; has built new homes, residential & business, remodeled old homes & business.

Dr. Larew gave the following causes of foundation failure:

> FREEZE THAW; but eleminated that because of the drainage. No water standing.
> TRUCK DRIVEN TOO CLOSE to Foundation causing it to pop but eliminated that because it was impossible for the truck to get into the yard.
> HEAVY EQUIPMENT drilling of vibrating which did NOT happen.
> LIGHTNING hitting in the ground. LIGHTNING was the most probable cause because there was no way the others could have happened.

Dr. Larew testified that he had seen foundations where LIGHTNING had struck the ground and caused them to break. He was inside the building & did identify the pictures. The cracks were CLEAN. If freeze/thaw there would have been mud. No. Mud. No Fill Dirt. Dr. Larew testified that the foundation went 1st when it was lightening. WEATHER RPT. shows the LIGHTENING (thunderstorm) Twice in Oct. 1978. Pl. noticed the walls last of January or 1st of February 1979. He testified the wall will

continue to warp & could fall without warning.

With all the PROOF in that the wall & foundation damage was caused by LIGHTENING, Def. still brought Fleming with his INCONSISTANT & CONTRADICTORY testimony, to deceive the court. Def. KNEW Fleming was not on the premisis at 1216 Highland in May '79. Since Fleming had seen the TOP SOIL that Mrs. Justice was using for her pyramid planters shows that he went out & looked at the outside in the summer of 1983 DURING THE 1ST TRIAL. Records show that Def. ran into the 3rd day of the trial to bring in Fleming.

Mrs. Justice had pictures at the 2cd trial of the pyramid planters of her garden in the 3, 6' wide--3 tiered Planters with vegtables growing; cancelled cks of the purchase of thes supplies for the pyramid planters, and the planters. But Judy Wherry would not submit this evidence to collaborate with her testimony which she initiated under Cross Exam. Pictures of the planters at the porch with the

dog she adopted in 1981. PAPERS. The pictures & chks. were part of the things that Mrs. Justice wanted to bring in on her objection but not allowed.

Mrs. Justice had purchased the planters, top soil, mulch in 1983. The YR OF THE 1ST TRIAL. Had proof which Judy Wherry would not submit. Concealing or withholding evidence is FRAUD. Pl. were led like a sheep to the slaughter with evidence that they were not permitted to submit, because of the attorney using deception. Def. destroyed their records. The letter on 1/28/86---just 8 days before the trial from Corroon & Black reveals they had more in their files at that time. Exhibits that Pl. had mailed to them. Some of the exhibits were submitted in Court before the Rep.s fromCB came. Destroyed Records & then Mrs. Justice could not get her exhibits submitted due to the attorney.

Mrs. Justice had typed page after page of FACTS for Judy Wherry to use. Mrs. Wherry

had suggested that Mrs. Justice write down the facts in order for her to use them. This Mrs. Justice did plus the contradictory statements made in court by M. Wolf & Dick Worch & Paul Fleming. STATEMENTS FROM THE TRANSCRIPT TO DISCREDIT THEIR TESTIMONY showing deception. Mrs. Wherry did not use 1 quote from the transcript. It was imperative to use that previous testimony to prove the FRAUD & DECEIT. Because PL. had an attorney, they were not allowed to bring in this previous testimony. Mrs. Wherry's concealing this evidence is FRAUD & DECEIT.

The testimony of Paul Fleming at the 1st trial reveals that he IDENTIFIED" the pictures of the cracked foundation INSIDE the garage & he was never inside the locked garage. Upon questioning he kept saying that he had seen it & that he saw it from the outside. Finally, Fleming stated, "Ma'am, I couldn't see the crack from the outside of the bldg." Tr. p.284 L.4. Fleming claimed to have seen 12-15 bldgs.

that had been struck by lightening, but he could not name one. POOR MEMORY. On p. 286 of the TR. Fleming could not describe the fence or how he got through the LOCKED GATES. Said he could'nt remember if the gates were locked or not. Fleming's testimony reveals that he was NEVER in the locked garage. Attached are pp. 20 & 21 of the pages prepared for Mrs. Wherry that she REFUSED to use. Also regarding the FILL DIRT BOUGHT IN IN DEC. 1978 BEFORE discovered damages & when ice & snow on the ground. Incorporate pp.20 & 21 here as argument. Not using the previous transcript, knowing what it would reveal is FRAUD. Concealment of evidence is FRAUD.

> "Fraud, of course, may be committed by suppression or concealment as well as by Expression of Falsehood. 24 Ohio Jurisprudence 2d 676, Fraud & Deciet, Sec. 74 A false impression may be left by a concealment or nondisclosure of facts which there is a duty under the circumstances to disclose..."

There was too much SUPRESSION OR CONCEALment and FALSE STATEMENTS & PL. not being allowed to do anything about it, because she had

an attorney who was also participating in the SUPRESSION OR CONCEALMENT. WHY??

One may make a false statement under oath & NOT KNOW it, but if they knowingly make a false statement under oath that is PERJURY. Contradictory statements under oath is PERJURY & there were contradictory statements. When Fleming stated that the foundation was CEMENT & then said it was BLOCK, that is CONTRADICtory. He made more CONTRACDICTORY statements at the 1st trial, but Mrs. Wherry concealed or suppressed that INFORMATION & refused to Cross EXAM. NOT one time did Mrs. Wherry use the sworn testimony of the previous trial to discredit the witness & prove FRAUD & DECEPTION! Mrs. Justice had prepared these contradictory statements in advance for her & are attached to this document.

There is evidence in court that the records were destroyed. Destroyed the records & then the Def. came to court truing to say they or Jack Turner denied the claim on the garage in

June 1979. Claimed he hired Paul Fleming to go out & check for the storm damage & he went 5/23/79. M. Wolf CONTRADICTED both of their testimonies. Turner viewed the outside of the garage March 1978. His own testimony reveals that he was not in the garage. Wolf took over as ADJUSTER AFTER Turner LEFT. SEE police rpt. dated 4/8/79 regarding the vandalism at 2654 Adams. Wolf testified that he was out there in April 1979. Wolf was the adjuster in April 1979--AFTER Turner LEFT.

Since Turner was no longer acting as the adjuster & not in Worthington Office he did not send Paul Fleming out to 1216 Highland 5/23/79. That accounts for Paul Fleming's CONTRADICTORY testimony. He was not there, as Pl. have said all along. The gates were locked, garage was locked. Fleming could not say if locked & how he got in.

Since Mike Wolf had taken over in April 1979, Turner was not there in June 1979 to meet with Mrs. Justice to DENY the claim on the garage at 1216 Highland st. There had

NEVER been previous testimony that the claims had been denied. Had it been denied, then Mrs. Justice would not have been getting estimates. Notice the 1st estimate for the garage was 8/15/79. Getting estimates & waiting.

Bringing Turner in just confirmed Def. deception!!

Mike Wolf testified at the 1st trial regarding the garage at 1216 Highland st.,

"Well, I can speak from having seen the file." TR p. 70, LL 6. At the trial (2cd) it was proven they did not have the file at Corroon & Black's or at W. Amer. or Ohio Casualty. The letter from Wolf date 12/15/80 shows he did not have the file at that time, but his testimony reveals there had been a file. They destroyed records. PP 68 & 70 reveals that Turner handled the garage damage before Wolf & what Wolf knew was the file which was destroyed. Turner last worked at the Worthington Office or 5030 N. High Office, in March, 1979. Wolf took over Turner's posi-

tion as adjuster in April 1979 according to testimony. Turner was not at 5030 N. High to hire Fleming in May 1979. Turner was not at 5030 Office to meet with Mrs. Justice in June 1979. Wolf was handling the Claims.

Wolf testified at the 2cd trail that there was NO LIMIT on filing claims. If there are no limits on filing claims & they honor them filed several yrs. after damages, then there is no limit to the garage at 1216 Highland St.

> "Defraud is determined in more comprehensive terms than former law, by including the Practice of Deception to obtain a benefit, as well as to Cause Some Detriment To Another. Some former offences containing an element of fraud theoretically limited to causing some determent to another. Griffith v. State, 93 Ohio St. 294 112 N.E. 1017 (1915)
>
> Revised Code 2305.09 states:
>
> "An action for any of the following causes shall be brought within 4 YRS. after the cause thereof occurred:
>
> (C) For relief on the ground of fraud; (D) ..."If the action is for trespassing under ground or injury to mines, or for the wrongful taking of personal property, the causes thereof shall not accure until the wrongdoer is discovered, nor, if it is for fraud, UNTIL THE FRAUD IS DISCOVERED."

It was deception from the beginning when Pl. took out the policy and deception continued. According to the policy Pl. had coverage for:

1. Fire or lightening
2. Windstorm or Hail
3. Vandalism or Malicious Mischief
4. Breakage of Glass
5. Collapse of Bldg or any part
6. Burglars
7. Water Damage

Pl. filed their claims & only one was denied and that was the roof on 2410-12 Glenmawr, but Pl. filed the claim before the year expired. Pl. thought they were being paid on the other claims. Led to believe that.

After the complaint was filed, Def. claimed damages caused by EXCLUSIONS in the policy in order to not pay. For the garage they claimed freeze and thaw which did not stand as previous explanation in this document. Claimed vandalism was cause by tenants, but tenants were not excluded. Claimed rotten or deteriorated, but could not prove it was rotten. Claimed there was no hail Storm when there was. Claimed personal items were not covered in

storage when there was not exclusions on that. Claimed Pl. were holding their personal items for the rental unit. Claimed normal wear & tear, with windows broken out, walls knocked in, ceiling torn out, screens ripped out; doors broken. Claimed estimates were not sent when they were sent by CERTIFIED MAIL. With flat $100 deductable claimed DEPRECIATION for glass and newly painted interior. Destroyed Records to prevent paying. Unable to prove--UNSUBSTANTIATED ACCUSATIONS.

There is Fraud & Deception throughout the policy and the Def. have continued with the Deception even throughout the trial. Def. claim to have Pl. insured, but there was so much deception used. One does not get to complete a claim without going to court, and then they try to say the Pl. did not abide by Their Rules. The fact is the Def. DID NOT ABIDE BY THEIR OWN RULES!! Def. did not abide by their own rules to Prevent Pl. From Doing What They Were REQUIRED TO DO. In the policy

under SPECIAL PROVISIONS company states:

4. YOUR DUTIES AFTER LOSS:

d. as often as WE REASONABLY REQUIRE:
1) exhibit the damaged property:
2) provide us with records & documents WE REQUEST & permit us to make copies
and, 3) submit to examination under oath & subscribe the same.

e. Submit to us, within 60 days AFTER WE REQUEST, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
1) the time & cause of loss
2) interest of you & all others in the property involved & all encumbrances on the property;
3) Other Ins. which may cover the loss;
4) changes in title of occupancy of the property during the term of the policy ;
5) specifications of any damaged bldg. & detailed estimates for repair of the damage;
6) an inventory of damages personal property described in 4c; receipts for additional living expenses incurred & records supporting fair rental value loss.

According to testimony DEF. DID NOT ABIDE BY THE ABOVE RULES. VIOLATED their own RULES. Def. Breached their own contract. DEF.— had no intentions of keeping their part of the Ins. Rules. They never planned to pay any claims. The rules were for the purpose to prevent Pl. from filing a claim. However, Pl. got estimates & sent them in without being

asked. Since they did not hear from Def., they sent them in again, by Certified Mail, even though def. were not requiring them. M. Wolf only asked for the bills, estimates, cks., for 2654 Adams when he came out in May 1979. That was submitted by Certified Mail but he did not pay it. Never heard from again until Dec. 1980--4 mon. after Compliant was filed. Pl. led to believe they were going to be paid. Then Def. cancelled the Ins. July, 1980.

ADDITIONAL CONDITIONS UNDER SPECIAL PROVISIONS stated:

> 12. LOSS PAYMENT. We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. LOSS WILL BE PAYABLE 60 DAYS after we receive your proof of loss
>
> and; a. reach agreement with you; or
> b. there is an entry of a final judgment
> or; c. there is a filign of an appraisal award with us.

Defendants did not Abide by any of these rules as testimony reveals. Def. had no intentions of abiding by their policy. Their policy was a DELIBERATE MISREPRESENTATION of the truth. Instead of paying, they cancelled

the policy july 1980.

The tape recording of the meeting that Eunice Justice had with M. Wolf on 12/22/80 reveals that Wolf/Def. did not abide by the above requirements Duties after Loss. Mrs. Wherry Refused to submit the Tape Recording which was admitted at the 1st Trial. This is concealing evidence which is Fraud.

The contract with Def. was illegal. The time for sueing was for 1 yr. which is illegal & in violation to the 14th Amendment to the U.S. Constitution which states:

> "...nor deny to any person within its jurisdiction the Equal Protection of the Laws"

The Statue of Limitations for suing under Contract Law is 15 yrs. Def. contract is illegal. More Deception to Pl. of Statue of Limitation. OHIO REVISED CODE 2305.06 states a suit may be filed: "within 15 yrs. after the cause has occurred."

However, according to REVISED CODE 2305.09 of the ORCP Pl. had 4 yrs. due to the FRAUD & DECEPTION. The Complaint was timely filed

since FRAUD was involved.

Def. owe Pl. PUNITIVE DAMAGES because Fraud was involved. Mrs. Wherry refused to use previous testimony on Cross Exam of Mike Wolf. This was more Deception to prevent Pl. from proving their claim. When Mrs. Justice questioned Mike Wolf regarding Duties after loss, at the 1st trial, he testified that they had not required them to submit to examination under oath. TR. P.78. Wolf did state:

> "It is not a requirement that is SET IN STONE. I do not have to ask that you take a sworn oath or a statement." Tr.p.77,LL. 23-25.

FRAUD & DECEPTION was used in court.

COMMITTEE COMMENT TO H 511:

> "This section is designed to modify & clarify, with some modifications, a variety of terms essential to defining theft, Fraud and forgery offenses, so as to permit coverage of these offenses in a manageable number of sections. Formerly, most of these terms were found only in the case law. "The definition of 'deception' adopts a broad concept of Deceit, framed in terms not only of acts or omissions but also of Results. The essence of Deception is an act or OMISSION which the actor is Consciously aware creates or perpetuates a false impression in another. If the act involved in a representation, it need not be totally false--it may merely be misleading. In addition, the acts of withholding, or preventing another from getting

information are specifically included in the definition. Thus, a person need not actually make a representation to practice deception. IT IS ENOUGH IF HE MERELY PREVENTS ANOTHER BY WHATEVER MEANS FROM LEARNING THE TRUE FACTS, and thereby KNOWINGLY DECEIVE HIM.

"Defraud is defined in more comprehensive terms than former law, by including the practice of DECEPTION to obtain a benefit, as well as to cause some DETRIMENT TO ANOTHER. Some former offenses containing an element of FRAUD were theoretically limited to CAUSING SOME DETERMENT TO ANOTHER. See e.g. Griffith v. State, 93 Ohio St. 294, 112 N.E. 1017 (1915).

All of the FRAUD & Deception used & revealed in court prevented Pl. from being paid for the damages, rent, punitive damages--the full amount pl. prayed for. Pl. took the Ins. in good Faith thinking they had coverage for damages, but Def. lied, knowing they were lying, saying the property was rotten, when they had just insured it a couple of yrs. previously. If they are going to insure rotten property, then they should pay for rotten property. IT WAS NOT ROTTEN. if it had been then it was their problem for insuring rotten property. They lied on the witness stand

knowing they were lying and brought in witnesses to lie knowing that was what they were doing. Brought Paul Fleming who was not on the premises, knowing he was not there, even his testimony of claiming he had seen the foundation, finaly testified:

> "...I COULDN'T SEE THE CRACK FROM THE OUTSIDE OF THE BLDG. As I say, I have been in the Grove City Home Repair for 32 yrs. I seen enough buildings...Tr.p.284,LL16-25

Continued his testimony that he had seen 12-15 bldgs. struck by lightening but could not give one address. Tr. p. 284, LL 16-25.

At the 2cd trial he had not seen one foundation struck by lightening but Dr. Larew had. Mrs. Justice testified that Willie Slate had is how she knew about the lightening.

Bringing Paul Fleming in to falsely testify is Deception & Fraud. Claiming he was an expert, when he had no educational background to qualify him & his background in work was LOADING LUMBER AT A LUMBER YARD. Def. DESTROYED RECORDS & claimed Pl. had not sent in the records. Had Turner claiming that he met

with Mrs. Justice, Pl. at her home in June 1979 & denied the claim on the garage when he left at the end of March 1979 and Mike Wolf took over as adjuster in April 1979. Claimed Turner hired Fleming in May 1979 when Turner was not working at the N. High office in Columbus--GONE. Def. made unsubstantiated ACCUSATIONS regarding vandalism, theft, water damages, storm damages to deceive the court and jury to prevent paying the claims.

At the 1st trial Mrs. Justice, Pl.--acting pro se--read the conditions in the policy of the Def. DUTIES AFTER LOSS: questioning Wolf:

Q. In #13 of the CONDITIONS, doesn't it say, WE WILL ADJUST ALL LOSSES WITH YOU?
A. Uh-Huh, yes.
Q. We will pay you unless some other person is named in the policy or is legally entitled to receive payment?
A. Uh-Huh, Correct.
Q. It does say that Loss will be Payable 60 days after we receive your Proof of Loss. That is the Policy, correct?
A. Uh-huh.
Q. And reach an agreement with you--did you ever try to reach an agreement on Glenmawr?
ADAMS: OBJECTION...
Mrs. J. WE ARE STILL GOING DOWN THIS PAGE.
COURT: I am afraid so. Overruled.
Q. Did you ever try to reach any agreement on anything except the $200 that you brought

that $200 check that you brought on Duncan?
A. Oh, yes.
Q. What was it?
A. Damages on Adams.
Q. And the damages on Adams, were you refusing to pay for RENT, too,...
A. I DON'T RECOllECT.
Q. So then you have just agreed that you did not try to reach any agreement except on TWO BUILDINGS?
A. Duncan and Adams, that is correct. I did not believe there was coverage for the contents that you were claiming & I also stipulated earlier what I thought about the situation at Glenmawr.

Notice Pl. Eunice Justice was reading from Def. Conditions in the policy which she did hand to Judy Wherry & to her knowledge, Mrs. Wherry did not submit them to the Court. Judy Wherry did not use any of the previous testimony in her Cross Exam of M. Wolf or P. Fleming. The above shows the claims were payable in 60 days after rec. Proof of Loss. LOSSES in 1979 and never attempted any settlement until 12/22 1980--4 months after complaint was filed, and that was with Eunice Justice. D.K. Hurley filed the Complaint and was the one legally entitled as mentioned above. Only attempted settlement on 2 Bldgs. Not either garage,

not Glenmawr.

This shows DECEPTION. Pl.still waiting to be paid. Bdfore they met with Eunice Justice 12/22/80--& SHE WAS NOT THE ONE LEGALLY ENTITLED TO RECEIVE PAYMENT--Def. cancelled the policy effective 7/6/80.Def. did not abide by their own contract. BREACHED THEIR OWN CONTRACT. Then bring in Turner who testified in the 2cd trial that he met with Mrs. Justice at her home in June 1979--AFTER Wolf had taken over his position for over 2 months. The above information was withheld from the Court. Act or Omission is Deception--Fraud. Evidence omitted.

Def. were still bringing out in the 2cd trial that Mrs. Justice refused payment. Not Legally entitled. Andy Adams kept bringing that up knowing that was not proper. In the transcript of the 1st trial Adams stated:

> "Objection, an answer was duly entered by counsel. He is Not obligated to negotiate with her once this matter is filed. he is obligated to respond in court."tr.p.33,l.2-4

In the 1st trial Wolf testified that he

had spoken to Eunice Justice on the phone twice; once prior to 12/22/80 & in the spring of '81. tr.p.33. At the 2cd trial Wolf testified that he called Mrs. Justice 4 times. This contradictory testimony is for the purpose of deceiving the court & jury.

Attached are copies of mike's previous testimony prepared for Judy to use to discredit him, which she refused to use. WITHHELD INFORMATION. OMISSION. DECEPTION. The tape recording of the meeting of Wolf & Eunice Justice 12/22/80 was withheld. OMITTED. Concealing evidence that was in the 1st trial.

In regard to the damages at the 2412 Glenmawr the tape recording reveals:

J.F. Baker & Sons replaced the roof for $2,241

Wolf had Dick Baker's Estimate of $2,190. (This estimate confused Mrs. J. because she thought he had the $75 deduction from the storm damage when J.F. Baker was installing new roof.)

Wolf claimed he could not find any record of Hail Storm in 1979.

Wolf reveals that he talked with Dick Baker's men on Glenmawr when they were on the roof 4/22/80.

Wolf said Dick Baker's men told him the roof was rotted. Claimed the eaves were all rotted out.

Wolf 1st claimed the eaves were all rotted

out & hung up on Mrs. Justice.
Wolf then on 12/22/80 next claimed there was no storm. Both deception as Mrs. Justice told him, to prevent paying.
Mrs. J. told Wolf: "The eaves are still up there. I started to have it painted but I don't have it all done. YOU CAN GO LOOK. You can see there's not 1 piece of rotted wood replaced anywhere. NONE. p.5
Mrs. J. told him about the Temp. repairs with roof cement & White shingles.
Willie Slate did the temp. repairs.
Mrs. J. told him 2cd time to go look--no rotted wood. "I'll go by what they say"was Wolf's reply. (He did not want the truth.)
There is no mention on the tape that Mrs. J. was irate or too emotional causing Wolf to hang up the phone, slam the phone down in her ear. He acknowledged slamming the phone down 7 telling he wasn't paying.
Wolf stated, "I still think I can get those 2 employees." Referring to Dick Baker Roofing men who did not do the roof.
Mrs. J. mentioned the Jury & view of the property.
Wolf stated: "Ma'am, there are a couple of losses here, you have listed. You didn't present this loss to us at the 1st time. It's not just the 1980. We got it back in 1973. I spoke to Mr. Buckner over the phone.
EJ: No you didn't speak with Mr. Buckner.
MW: I said you have any wind damage there. He said Yeah. I said did you have any water damage. He said Yeah. You were going to get some estimates for repairs. You're the one who didn't come up with some estimates for repairs until I hear from you about a yr. & ½ later.
EJ: You just walked right through here, you acknowledged hanging up on me, & slamming down & telling you weren't paying me.
MW: That has nothing to do with the fact that for about a year & ½ I have waited for you to give me some estimates.

EJ: You got the estimates from Slate Con-

struction Co.
MW: Ma'am, I see we're not getting anywhere. Consider if you want, Okay?
EJ: Now, look a here. You hung up on me. You said that when you came in. You slammed the phone down.
MW: That's right, I agree. That's right.
pp.8 & 9

There was no mention of any kind that Mrs. Justice was in the Hospital. She was not in the Hospital in July or Aug., 1979.

EJ: Now let's go over this again on this roof.
MW: Roof on Glenmawr. I'm going to check the weather rpts. again, so we can find out what kind of storm we had.
EJ: Alright. Now, there's the weather. Before you never disputed it being the weather. You just said it was rotted.
MW: No, I don't dispute it is a hail damage.
EJ: And I... Didn't I even call the man.
MW: I'm not saying there wasn't wind damage. What I'm disputing is where there was Hail Damage. That's what I want to check out OK?

Mike Wolf's testimony contradicted the tape. Wolf did not know until 12/22/80 that J.F. Baker Roofing installed the new roof. He thought it was Dick Baker Roofing. He even came in with Dick Baker's estimate of $2,190, which Mrs. J. had not given him. It confused her because she thought it was the figure after the $75 was deducted for having to re-

place the tarp on a holiday that J.F. Baker's had not secured. Wolf was claiming the eaves were all rotted and refused to go investigate. Pl. had chips of paint in their Exhibits that verified Mrs. J.'s testimony of scraping the paint, the barn red latex paint on the outside with primer underneath, but Mrs. Wherry would not submit the Paint chips. There was no rotted wood. Wayne Baker from J.F. Baker's testifyed they did not have to replace any rotted wood. Picture of Glenmawr reveals this.

Wolf testified that he went to see J.F. Baker Roofing late summer or early fall of 1980 regarding 2410-12 Glenmawr. Tape contradicts that. He was going to take the work of Dick Baker's men. J.F. Baker did not confirm that the eaves or any wood was rotted, so he change his story. On the tape he said, "I don't dispute it to be hail damage." Disputed it in court. Wolf also stated on tape, "I'm not saying there wasn't wind damage." Disputed it in court. This is all fraud and deception when he testifies to the contrary. Claimed he

waited year and ½ for estimates is why he did nothing. In court he claimed Mrs. Justice was going into the hospital. No mention of hospital in the tape.MORE DECEPTION. LIES. Mrs. Justice was not in the hospital. Tape reesals that. SIGNED POLICE REPORT of August 26, 1979 reeals that. Signed check to Willie Slate on Aug. 31, 1979 reveals that. Wolf 1st testified that Mrs. Justice was in the hospital in Jurly 1979. Then changed to Aug. 1979. Wolf testified at the 1st trial he did not have to have an appointment to view the exterior. TR. p. 76 LL. 8-12. Used the hospital excuse in the 2nd trial to DECEIVE court & jury of whay he did NOTHING. They did not abide by their rules. DECEPTION TO PREVENT PAYING. Mike Wolf's going to see Pl.'s witnesses showed more deceptionand fraud.Had they wanted to know what was going to be their testimony, they would have taken their DEPOSITIONS. DISCOVERY IS FOUND BY DEPOSITIONS. Def. brought in Dick Worch who does or did ESTIMATING for J.F. BAKER & SON. as their witness. According to his testimony, he was NOT ON THE ROOF at 2410-12 GLENMAWR. (Testi-

mony of Dick Worch was read at the 2nd trial.)

Andy Adams questioned:

> Q. Now, are you speaking in terms of when you walked around the roof? I assume you WALKED around it in its entirety to inspect it.?
> A. No, sir, not on that roof.
> Q. Your were afraid to walk it?
> A. Well, afraid, not crazy. It was an eight twelve (sic) pitch, don't walk around on anything like that. TR p. 227, LL. 7-13.

Judith Wherry had the picture of 2410-12 house and roof is NOT too steep to walk as Willie Slate, Jr. testified. Mrs.WHERRY WOULD NOT SUBMIT THE PICTURE which was from MULTI LISTING. This is concealing evidence which is FRAUD. Adams submitted this testimony, KNOWING that Dick Worch was NOT on the roof, in order to deceive the ct. is FRAUD. Dick Worch's testimony threw Andy A. until he could hardly get his next question out, because he KNEW Dick Worch must get on the roof to inspect. Adams:

> Q. But, you are sayin -- you saw -- you visually inspected and saw the two shingles that were -- they were missing? Tr. p. 227, LL 14-16

The first time that Andy Adams had Dick Worch on & discover this, may excuse, BUT, when he submitted the TRANSC%RIPT & had it read, Adams KNEW he was submitting FALSE TESTIMONY. Furthe

Adams KNEW Worch went out 9/17/79and the roof had already been temporiarly repaired by W. Slate 2 wks. prior. Yet Adams bellowed all the time in court there were only two shingles missing out of 1,539 shingles. Worch testified they figured it out in the hall of how many shingles. TR. p. 227, LL. 21-22.Wayne Baker's testimony had in his 'notes' 1900 sq. ft. Willie Slate Jr. & Charles Wilson measured the roof which was 16.7 X 42' on each side plus the little over hang which was 12' by 14" Giving 1,426.8 sq.ft. D. Worch was NOT on the roof & did NOT measure it. As Mrs. Justice brought out in her testimony as evidence of his not being on the roofwas he gave ESTIMATE for theFRONT PORCH roof. Front porch roof was PROTECTED by evergreen tree directly in front & had no damge. Wherry REFUSED to submit the Picture. Had he been on the roof, he would have had correct measures & noticed front porch roof not damaged. Pl. had NOT requested estimate of front porch rf.

Worch got confused with his lies that he did not give correct dat of when he was there.claimed

9/22/79. Then he lied and said he was back in May 1980 to update. Tr. 229-230. Update does not require a 2nd visit to check prices. When asked which visit it was that he saw the 2 shingles off, he could not tell. TR p. 230 LL 8. He was there only once. Contradicted own testimony. Worch testified, "WE JUST UPDATED THE PROPOSAL" Tr. p. 230, L. 12. Contradicting his testimony:

Q. Tell me how you conducted that est. What did you do?
A. Well, I -- I have or had a station wagon with ladders and I -- every estimate that I give, I get up on the roof and I inspect to see what it needs.
Q. Oka - Did you inspect that roof?
A. Yes, sir.
Q. What did you find when you inspected roof?
A. I will read myNOTES here--This is a long time ago -- that we do have. TR p. 226

Q. Did you see any STORM DAMAGE?
A. The only thing I saw -- I am going to read my notes here, too. There were 2 shingles off the s. side of the upper main roof, now, IS WHAT I WROTE. TR. p. 226, LL. 18-

Q. You don't know how those got there?
A. NO, I DON'T KNOW TR. p. 226, LL. 18-23

Worch did NOT testify he did or did not see any STORM DAMAGE. His Testimony reveals there ONCE. "THE DAY I WAS OUT THERE." TR. p. 233, LL. 20

D. Worch further testified, "I came down here be-because I was ORDERED IN HERE and I don't lie. TR. p. 234, LL. 12-14.

"Wayne Baker orders me and I do what he tells me to do." TR. p. 234, LL. 21-22.

The estimate was 9/17/79 & 1st trial was July 1983. Worch brought NOTES. NOTES KEPT 4 YRS. PL. wanted to see if he had notes on other properties so those notes were SUBPOENED, but they were not brought in. Those notes used as DECEPTION. Worch wrote on Contract that the ROOF was:

"Main house roof is in very poor condition, beyond repair and should be removed and re-roofed as quoted..." This is an updated contract with current prices.

Worch did NOT state on the contract what caused the "poor cond" Whe the hail beat it up & the wind took parts off also after the hail beating, of course, it was in VERYPOOR CONDITON Pl. was out there after the storm and saw the shingles ALL OVER THE YARD. So did Bill Buckner and Willie Slate, Jr. who testified. Repairs Slate Const. was TEMPORARY so as to hold until the ins. adj. could get out there & to protect the tenants. REPAIRS NOT PERMANENT. Def. did not contact Willie Slate or his son re the roof. Why? They did not want someone who saw the storm damage. They brought in someone they attempted to prove that the roof was rotten & deterriorate.

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Q. You don't know how those got there?
A. NO, I DON'T KNOW TR. p. 226, LL. 18-23

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USING DECEPTION . This is what Adams kept bellowing throughout the trial to deceive the Ct. & Jury. Wolf was going to do what Dick Baker's men but changed to J.F. Baker's after learning NO ROTTEN WOOD. He never brought in the Weather Rpt. Weather Rpt. Ex. reveals hail and winds & many thunderstorms during July & August 1979. Def. were avoiding the truth to deceive.

Def. attempted to deceive the court & jury by the number of known yrs. the roof had been on the house, which was seven. Mrs. Wherry did not put the back side of the Warranty of the Roof in the Exhibits. Back side shows Warranty of 15, 20 & 25 yrs. (J.F. Baker only gave a 15 yr. warranty--cheapest roof.) D.K. Hurley pointed out the Warranty on the back side, but she refused to submit it. Pl. do not have the warranty, but according to Willie slate's testimony, the shingles were not worn out. They had plenty grain. He testified tha when the shingles were worn out the grain was off & it was like an "Old Shoe". He testified

that even the wood had dents from the hail. Willie Slate, Jr. was an eye witness after the storm. He was on the roof. Parts of the wood showing, with dents from hail. Dick Worch did not have in his "notes" all the new white shingles put on the roof before he went over there. Worch was not on roof.

Def. did not solicite Slate's testimony because he was out to tell the truth.

Adams kept bellowing out to deceive the court & jury that Willie Slate's estimate was $2,500 and J.F. Baker's was $2,241. Claiming Pl. submitted a higher one to get more money. Price of shingles makes a difference. Neither contract gave a warranty. Slate was unable to install the new roof because he was building a new church & then his roofer was no longer with him when Pl. installed the roof, as testimony revealed, but Adams kept repeating unsubstantiated accusations to deceive.

Norma at J.F. Baker & sons Roofing or the keeper of the record was subpoened, but she did not show & the Records were not brought in.

After receiving the subpoenas, J.F. Baker's attorney came to the court & threatened to sue Eunice Justice for harrassing, mentioning that she had called Dick Worch's home--using an unlisted number. If it were unlisted how come it was in the phone book? Dick Worch's notes subpoened and not brought in. Subpoenas to 2 people & no records from roofing. Withholding records is fraud. Deception. Since Dick Worch showed up at the 1st trial with 4 yr. old records, then why did they not have the records supoenad?

Knowing that Wayne Baker from J.F. Baker had ordered Dick Worch in in the 1st trial to testify against Pl.. & knowing the records had been subpoened & not brought in, & knowing that Wayne baker's attorney was there at the begining of the 2cd trial saying he was going to sue Mrs. Justice, Pl., & knowing Pl. had told her to call Wayne Baker on Cross Exam, even wrote it down on the pl. cooy of subpoena, Judy Wherry called Wayne Baker on Direct. Knowing that he told her on the phone he was not go-

ing to do Pl. any good. Knowing that Worch had not been on the roof and that they did not have the correct sq. Ft. of the Bldg.--did not measure it. Knowing all this & more, Judy Wherry called Wayne Baker on Direct. Wayne Baker attempted in his testimony to discredit Eunice Justice. Mrs. Justice had previously testified about his men not putting anything but the tarp on the upper side of the roof & the storm during 1980-Memorial Day Week End, had taken the tarp off causing the North side of the bldg. to be flooded. Due to the tenants quick action by vacuming up the water & calling Debbie who when there, put holes in the ceiling to prevent it from falling in, the place would have been a disaster. Pl. could not locate Wayne Baker, who testified that he was on vacation. It must have been a week end vacation. Pl. called Willie Slate who came over on the holidays & replaced the tarp & securely fastened it. Wayne Baker submitted that claim to his ins. agent because he came over immediately & checked it. He also said he made his

Roofer do the repairs. Then testify that he paid $200 to have it repaired. Evidence from his testimony, Baker testified that the damage was in the Living Room, FR. Bed Room & Closet. That was the North side that Pl. had not filed a claim on. Bill Buckner's testimony does not reveal any such damage. Bakers testimony was deception. Wherry calling him on direct was deception. All Fraud. Wherry would not bring out the number of sq. Ft. that Worch had.

Def. Own papers show Roof was approved 7/6/79.

RE: 2654-56 ADAMS AVE. DAMAGES

Mike Wolf did not come to the Adams Ave. property until May 1979 when Don DeMarco & Debbie Hurley were working on the damages even though it had happened 4/8/79. Wolf claimed when he met with Mrs. Justice that he informed her that 75 E. Duncan damage (theft) was under Home Owners. Police Rpts show that the vandalism & theft happened in August 1979, After he met with Mrs. Justice. Since the work was almost completed when Wolf came to Adams, he

told Mrs. Justice to send him the canceled cks. bills which she did. He testified he did not receive the canceled cks., bills even though the Certified Letter shows that he did. The letter that Rick Lee sent to Mrs. Justice on January 28, 1986--just 8 days before the trial, shows that canceled cks (copies) were sent in. Corroon & Black had Destroyed the Records. Incorporate pp. 2-5 of this text here as argument. They came to court with only the copies of reports taken over the phone. Did not even have the certified copies of the letters. This is all Deception & Fraud. The judge had to threaten to send the sheriff out to get them in and then to show they had Destroyed the Records. This is in Pl. favor - According to #13 of Def. Policy the claim was suppose to be paid within 60 days. Wolf's own testimony only shows that the they never made any attempt to pay within the 60 days. Incorporate pp. 15 & 16 of this document here as argument.

Wolf testified that offered $729 for Adams Ave. based on the March 1980 letter. The Mar.

1980 letter gave $624 paid. The tape recording reveals that Mike Wolf did not want to pay for rent. Also he was taking depreciation. Policy had $100 flat deduction. Wolf was only in the 2 front rooms of Adams. He testified Mrs. Justice took him on a tour of the house. Tape reveals that he did not tour, did not know the size of the kitchen. Never even went in the kitchen to see the refrigerator that was still there at that time, but later moved to the basement. Still deceiving. At the 1st trial wolf testified, "What I saw was vacant." tr.p.54,118. At the 1st trial Wolf testified that he offered in settlement, "everything you asked for." tr.p. 52, 1.18.

Mrs. Wherry refused to cross exam Wolf with the tape recording, exhibits & previous testimony. Concealing evidence.

VANDALISM AND THEFT AT 75 E. DUNCAN STREET

At the 2cd trial, Wolf testified: "Don't have any recollection of 75 E. Duncan."

Mrs. Justice took Judy Wherry on a tour of

75 E. Duncan--all the way into the attic. Gave her a copy of the transcript. Typed up separately what Wolf testified to in the 1st trial for her to Cross Examine him about. She Refused to do it at the trial. Concealed the evidence. At the 1st trial Wolf testified that he viewed the property at 75 E. Duncan. He testified that when he entered the bldg., he went to the head of the stairs & there was a wooden door. Testified that he did not go into the apartment. When asked what he did up there, "looked at the door." tr.p.56 & 57. Here at the 2nd trial he had no recollections. The fact is to go into the attic at 75 E. Duncan, one would have to go through 5 doors. The one at the top as Mrs. Justice testified is glass-- has about 15 panes. One must go through the back apartment to get to the attic. Wolf had never seen Duncan.

The tape recording which Mrs. Wherry refused to use reveals that Mike Wolf came with a $200 check to get Mrs. Justice's signature. Signature on the proof of loss. This was a

trick and Fraud. Mrs. Wherry said Pl. would have been out of court had they signed that Proof of Loss. Yet she concealed that evidence. Wolf was concealing evidence. Used trickery & fraud. Gave false testimony to conceal evidence. To prevent paying. Wherry was submitting estimates by Willie Slate which Corro & Black mailed to Pl. Jan. 1986. A. Adams had her tear the canceled check off the Reduced copy. This was to conceal the fact that Pl. had sent in canceled checks. CB came with no evidence. C&B never even brought a certified letter. No. Evidence.

ANDY ADAMS:

Andy Adams constantly made accusations without evidence to prove his accusations. This is fraud & deception because he did it t deceive the court & jury. Andy falsely accus Mrs. Justice of not having antiques but claim just any old furniture was an antiques just t collect money. Not True. Andy claimed Mrs. Justice turned in an over estimate for the ro on Glenmawr just to get a few dollars more.

Not True. Price in shingles could make the difference. Andy claimed Mrs. Justice and D. K. Hurley had not submitted estimates, bills cancelled checks when they had. After Corron & Black showed without anything except their form for taking claim, Andy even attempted to take back the letters which Pl. had sent certified to Corroon & Black, but the judge caught him and had them admitted. Andy was attempting to destroy the evidence himself.

Andy brought in Jack Turner to testify knowing his testmony was false. Andy had not denied to the judge that the garage claim had never been denied. Andy knew Jack Turner had left the N. High Office in March 1979--was not there in May & June 1979. Andy claimed the stolen antiques were held for rental when they were not. He claimed Mrs. Justice read the policy and tried to file a claim to have something covered under it. Claiming she was filing false claims. Wolf testified that he had told Mrs. Jsutice her claim came under HO for theft. she had not read to know that.

Andy brought in Paul Fleming to testify, knowing he had not been on the property at 121(Highland St. Knowing from the 1st trial that there were locked gates & that the garage was locked. Classed him as expert when he knew he was not. Claimed that Mrs. Justice just went around taking pictures so that she could use them later in false claims. This remark was made when the picture of the garage was shown.

Andy claimed Mrs. Justice had a good working relationship with Willie Slate and could get him to say anything for her. Slate told the truth, which was proven by the expert from OSU. According to Wayne Baker, Adams & Wolf both contacted him before the 1st trial If he wanted to know anything about his testimony, it should have been through Depositions.

After reading the Weather Rpt, Andy still brought in witnesses to bear false testimony. Andy knew the roof had been damaged by storm.

Andy Claimed the letter received in 1980 was the only one sent. He had submitted the

others in the 1st trial. The above unsubstantiated accusations & bringing in witnesses to testify falsely, knowing their testimony was false is fraud and deception.

Andy repeated several times in his closing statements that Mrs. Justice accused him of bringing the witnesses. False again. Worch asked "Do I have to?" when asked how much he was paid. According to Fleming's testimony it was $1,000 but no one said who paid it.

3. RULE 59(A)(2) MISCONDUCT OF THE JURY OR PREVAILING PARTY

With an award as small as was granted for Pl., the Def. would be considered as the prevailing party. The preceeding pages show the MISCONDUCT of the DEF. & those pages are realledged & incorporated as argument here. Therefore, a new trial should be granted.

4. RULE 59 (A)(3) Accident or SURPRISE which ordinary prudence could not have guarded against.

Mrs. Wherry's actions were a surprise. Pl. had no idea that she would withhold information and not exhibit or submit their exhibits, even that had been previously sub-

mitted as explained in the preceeding pages. Pl. had no idea that she would not use previous testimony in the Cross Exam, even had the previous testimony typed up for her for most of it. Copies of some previous typed attached hereto. This is withholding or concealing information also. Vital information--exhibits & previous testimony--withheld. Further, Mrs. Wherry put Wayne Baker & Anne Burkhart on Diret testimony instead of Cross Exam as had been explained. Rick Lee should have been the one t to take the stand instead of Anne Burkhart as previously explained because Mrs. Wherry learne when they came & even just before the court ordered them in that Rick Lee was the supervisor in charge & was the one taking over the records. She had used copies of the records that Rick Lee had sent to Pl. E. Justice on 1/28/86 in Mrs. Justice's testimony which had estimates & cancelled checks in it. Mr. Lee only brought the forms that they fill out when taking rpts. Destroyed Records. Pl. had asked Judy to dall Lee on Cross & also Hostile

because he was. Since she called Anne asked her to have it on cross. Pl. were not given an opportunity to explain anything in court about what was going wrong, because Pl. had an attorney. The 1st 26 pages are realledged & incorporated here as argument.

In addition in selecting the jury, Mrs. Wherry took off the prospective juriors who were Property owners & kept prosective jurors who were tenants. selected jurors who were not Pl. Peers. Also, pl. were taken with surprise with the antique expert's testimony. Anyone who knows anything about antiques knows that he gave false testimony. It does not take an expert to know that an antique walnut desk is more than $125. His testimony contradicts what he told Pl. on the phone. They would not have had him come & testify had they known he was not going to give the true estimates. They would have just thrown themselves on the mercy of the court by their own knowledge & the use of antique books. Everyone in the courtroom who was looking at Pl.

saw the surprise & shook of the Pl. Not one piece was properly appraised. J. Turner's testimony was surprise. Judy did not object. Wolf was here taking over his position April 1979. Def. did not object to the Antique Appraiser, even though he was an expert. They objected to the other expert, Dr. Larew, & even took his testimony in Depos. But never objected to the appraiser. According to his testimony he does work for Ins. Co. They objected to Ted McClane. Andy Adams was caught in the hall talking privately with McClane. Did he talk privately with the appraiser also? According to Wayne Baker, Adams & Wolf talked privately with him. Judy never had Court order in records subpeanad from J.F.Baker & Dick worch's notes. Judy refused to show Pl. pictures of antiques in their home and also stored. Judy refused to show pictures of the personal items stored in attic at 75 E. Duncan.

Wherefore A NEW TRIAL SHOULD BE GRANTED.

5. RULE 59(A)(4) Excessive or INADEQUATE DAMAGES, appearing to have been given under the influence of passion or prejudice.

Pages 24 & 25 are realledged & incorporated here as argument. Andy Adams' unsubstantiated accusations did prejudice the jury & that was his intentions. Andy also prejudiced the jury by bringing up other cases that Mrs. Justice had in court. That was his intentions to prejudice the jury. Also Adams prejudiced the jury by bringing up attorneys who were not on the case. His remarks were for the purpose of prejudicing the jury. Had he told the whole truth about the court cases & the attorneys, he would have won the jury in Pl. favor. In court one is advised to tell the whole truth. None of the issues he brought up were issues of this trial. Adams was supposed to stick to the issues. He also prejudiced the jury by bringing in people to give false testimony, knowing it to be false. With Mrs. Wherry not objecting also caused Prejudice. The judge may have been prejudiced by the above since he gave a directed Verdict. Andy also sat & smiled at the jurors. Smiles to Prejudice. The jurors even smiled back.

DAMAGES WERE INADEQUATE. WHEREFORE a New Trial should be GTRANTED. Andy Adams' UNSUBSTANTIATED ACCUSATIONS were made with"ACTUAL MALACE" and were in violations of the Code of Professional Responsibility adopted by the Supreme Ct. of O. which states:

> "An attorney does have an obligation to the PUBLIC and to hsi profession to act HONESTLY, COMPENTLY, in good faith, and WITHOUT MALICE in ALL of the activities, This duty has been set forth in the Code of Professional Responsibility adopted by Supreme Ct. of O. and is enforceable by disciplinary proceedings against the attorney, including suspension from the practice of law or permanenet disbarment. Board of Edu. of Miami Trace Local School Dist. v . Marting (1962), 185 N.E. 2d 597.

Adams kept making the false accusations KNOWING TO BE FALSE, but continued:

> "A qualified privilege protecting the making of defamatory statements is exceeded when the statements are made with 'Actual Malace' that is, with KNOWLEDGE that the statements are FALSE or with RECKLESS disregard fo whether they were false or not.'" (N. Y. TIMES CO. v. Sullivan, 376 254, folloewed."

Fore the foregoing reasons a NEW TRIAL shoul be GRANTED. DAMAGES WERE INADEQUATE.

In ADDITION to the forgoing pages, Adams and Wherry tried to make Pl. accept a ssettlement. Wherry used UNDUE DURESS in attempting a

settlement---starting with only $1,000. They did get up to $5,000 but that did not include the GARAGE. They wanted to leave the GARAGE SETTLEMENT TO THE JUDGE. Wherry called Pl. at home one night and talked an hour trying to force a settlement. She even said that if Pl. did not settle, that Judge Reda was going to STOP THE TRIAL because he had other cases to be heard. Well, he did not stop the trial, but he did give a Directed Verdict. She said not to worry about her fee. Why???? Judy kept saying the Judge Reda wanted Pl. to take the settlement. Why would shesay that?

For the fore going reasons a NEW TRIAL should DAMAGES WERE INADEQUATE.

6. RULE 59 (A)(5) Error in the amount of recovery, whether too large or too small, when the action is upon a contract or for the injury or detention of property;

Recovery was TOO SMALL and this was upon a contract. The first 28 pp. are realledged and incorporated here as argument. The NEW TRIAL SHOULD BE GRANTED. By Def. own admissions they did NOT abide by their own Contract which was prepared by them. Since the Contract was drawn by Def. the

the law is in favor of the Pl. according to ORCP. The New Trial should be grranted according to National Mill Co. v. Craft, 23 CC(NS), 515, 34 CD 346 citing Toledo R. & C. Co. v. Mason, 81 OS 463.

7. RULE 59 (A) (8) Newly discovered evidence material for the party applying, wich with reasonable diligence he could not have discovered and produced at trial.

First 28 pages realledged and incorporated here as argument. Since Pl. were unable to submit their evidence this ground should be applied

8. RULE 59 (A) (9) Error of law occurring at the trial and brought to the attention of the trial court by the party making the application.

Plaintiffs attempted to bring to the attentio of the trial court, but was not allowed because they had an 'attorney". The 1st 28 pages are re alledged & inco. here as if written verbatum, for argument. The court giving aDirected Verdic claiming there was no fraud is an error.There was much fraud but it may have been so conceived at the trial that the court did not grasp what had happened, not that the judge is incompetent, but that the judge had not read the transcript

and examined all the evidence. The court probably was not aware that Wolf took over as adjuster AFTER Turner leftTurner left in April 1979 He was in Hamilton, O. when he was suppose to be employingPaul Fleming who was NOT on the property in May 1979. According to Paul Fleming's contradictory testimony he was NOT at 1216 Highland in May 1979. Copies of some of the transcript, stating evidence, plus other evidence that was at the trial and available to Mrs. Wherry are attached hereto, but does not include all. Mrs. Wherry still has the evidence that was submitted in the first trial but not resubmitted for the 2nd trial. These copies are not limited to all available evidence that was not submitted. PLEASE SEE TRANS. OF 1st TRIAL FOR LIST OF EVIDENCE NOT SUBMITTED, much was mentioned in preceeding pages.

In spite of all the deceiving and concealing of the evidence, there is some evidence that came to light of the fraud and deception that did not rise during the first trial. TR. of tape for court records since Def. have it.

WHEREFORE, a New Trial should be granted.

D. K. HURLEY and

EUNICE JUSTICE
1216 Highland St.
Colubus, Ohio 43201
Phone: 614-291-6256

PROOF OF SERVICE

A copy of the foregoing was mailed thisllth day of March 1986 to Andy Adams, 136 W. Mound, Columbus, Ohio 43215 by reg. U.S. Mail, postage prepaid.

EUNICE JUSTICE

IN THE COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO

D.K. Hurley, et al.,
Plaintiffs

- vs - Case No. 80-CV-08-4322
Judge Reda

West American Insurance and
Ohio Casualty Insurance Co.,
Defendants

DECISION

Rendered this ____day of April, 1986.

Reda, J.

Plaintiffs' motion for a new trial is hereby OVERRULED.

FRANK A. REDA, JUDGE

Copies to:

D.K. Hurley, Pro Se
Eunice Justice, Pro Se
Plaintiffs

Andrew S. Adams
Attorney for Defendants

Filed on March 26, 1986

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

D. K. Hurley et al.,

Plaintiffs-Appellants,

v.

No. 86AP-345
(REGULAR CALENDAR)

West American Insurance and The Ohio Casualty Insurance,

Defendents-Appellees.

D E C I S I O N

Rendered on May 7, 1987

Ms.D. K. HURLEY and MS. EUNCIE JUSTICE, pro se.

Mr. ANDREW S. ADAMS, for appellees.

APPEAL from the Franklin County Common Pleas Court.

STRAUSBAUGH, P.J.

Defendants moved the court of common pleas, after all the evidence had been presented for a directed verdict in their favor regarding plaintiffs' claims for fraud and various breaches of insurance contracts. The

court granted defendants' motions on the issues of fraud and for a contract claim covering one of the insured properties. Although the jury returned a verdict in plaintiffs' favor on the remaining issues, plaintiffs' moved for a new trial. The court overruled this motion and plaintiffs appeal.

This cause comes to us via a long and tortuous path. Despite various attempts by plaintiffs and defendants to negotiate settlements regarding plaintiffs' claims, plaintiffs filed suit in August 1980 for property damage and theft at five properties owned by them and covered by policies of insurance issued by defendants. Plaintiffs also alleged defendants' fraud or bad faith in failing to settle or pay the claims.

Plaintiffs' insurance claims concerned water damage and theft at a residential property, theft at a residential property, theft of certain antiques stored at another property, wind and hail damage at a third residential property, theft at another prop-

erty, and lightning damage to a garage also covered by the policies. The fraud allegations concerned defendants' failure to settle the claims in good faith.

Plaintiffs' request for a jury trial ~~was~~ denied and the cause was originally tried to the court in July 1983. Judgement was entered in defendants' favor on all counts in Decenber 1983. Appeal was then taken to this court. We remanded the cause for a new trial on the grounds that plaintiffs were entitled to a trial by jury. Hurley v. West American Ins. Co. (Sept. 20, 1984), No. 84AP-335, unreported (1984 Opinions 2377).

On remand, the jury returned a verdict in Plaintiffs' favor of $2,355 for damage and theft at four of the five properties. Judgment was entered March 6, 1986 for plaintiffs and the instant appeal followed on April 16, 1986.

Plaintiffs make three assignments of error for review by this court:

"I. The court errored [sic] ingiving a direct verdict,claiming there was no fraud.

"II. The court errored [sic] in ruling the manifest weight of the evidence.

"III. The court errored [sic] in not granting a new trial."

Plaintiffs also claim, on appeal for the first time,that their attorney concealed evidence favorable to their claims and, in so doing, participated in defendants' alleged fraud. In light of these latter contentions it is appropriate that we comment on the character and spirit of plaintiffs' arguments.

The judicial system generally, and appellate courts in particular, are available as of right as forums in which social disputes may find peaceful redress. We have embraced trial by jury as the means to that end. Implicit in this, however, is the responsibility of those who use the system to abide by the rules and mores of the system. As such, it is imperative that all parties who use the court--whether plaintiffs or defendants, the state or the accused--deport themselves in a manner which reflects the dignity and respect which attends our retreat from

personal combat. This responsibility is the duty of all litigants, whether represented by counsel or proceeding pro se. The right to pursue an appeal is not a license to engage in self-indulgent behavior or to belittle opposing parties. In short, plaintiffs' right of appeal also demands that they respect the integrity of all persons who use the courts, whatever the basis for their appeal.[1]

Having made these comments, we turn now to the merits of the appeal. Plaintiffs' most vigorously asserted argument focuses on the directed verdict granted by the court in defendants' favor on the issue of fraud. Since much of their thirty-eight-page argu-

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[1] Moreover, plaintiff's allegations that defendants perjured themselves at trial is not a ground for appeal. The appropriate sanction for perjury is a criminal action pursuant to R. C. 2921.11. There is no civil cause of action in this state for perjury. Schmidt v. Statistics, Inc. (1978), 62 Ohio App. 2d 48.

ment addresses the issue of whether plaintiffs proved their claims for property damage and theft, plaintiffs' contentions in this regard seem to address the weight of the evidence rather than the propriety of the directed verdict. Plaintiffs maintain, essentially, that, had the court admitted evidence that was either improperly excluded or never proffered, such evidence would have established that defendants withheld or destroyed evidence and perjured themselves at trial. This evidence is, in plaintiffs' view, relevant to the issue of whether defendants intended to abide by the policies of insurance.

Whatever merit these contentions may have otherwise, they have little value here in light of plaintiffs' challenge to the directed verdict. It is important to note that plaintiffs' assertions regarding the weight of the evidence and the value of excluded evidence are not appropriate considerations when ruling on a motion pursuant to Civ. R. 50(A). Strother v. Hutchinson (1981),

67 Ohio St. 2d 282. Rather, the test looks to the sufficiency of the evidence on each essential element of plaintiffs' claims. Ruta v. Breckenridge-Remy Co. (1982), 69 Ohio St. 2d 66. It is, then, a question of law as opposed to a question of fact. Id.

Civ. R. 50(A) governs motions for directed verdicts. The test to be employed by the court in making a determination of whether to grant or deny a Civ. R. 50 motion is set out in Civ. R. 50(A)(4), which provides:

> "(4) **When granted on the evidence.** When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue."

In ruling on a motion pursuant to the Civ. R. 50(A)(4) standard, a question of law being the only issue, the court is required to construe the evidence before it most strongly in favor of the party against whom the motion

is made. Civ. R.50(A)(4). Stated differently, if under all the facts adduced, reasonable minds could differ as to the conclusion to be drawn from these facts, a motion for a directed verdict must be denied. Cerny v. Domer (1968), 13 Ohio St. 2d 117; Hamden Lodge v. Ohio Fuel Gas Co. (1934), 127 Ohio St. 469. Where the party opposing the motion is reasonably able to make out all the essential elements of his claim from the evidence, a directed verdict against that party is inappropriate. O'Day v. Webb (1972), 29 Ohio St. 2d 215.

There are five essential elements to a claim for fraud. These are (1) a false representation; (2) knowledge by the party issuing the representation that it is false; (3) intent by the party making the representation to induce the claimant's reliance on the representation; (4) justifiable reliance by the claimant on the representations; (5) injury to the claimant as a result of the reliance. Hooper v. Seventh Urban, Inc. (1980), 70 Ohio App. 2d 101, 107. Noland v.

Bryant (Jan. 12, 1984), No. 83 AP-31, unreport
(1984 Opinions 46). See, also, Schwartz v.
Capital Savings & Loan Co. (1978) 56 Ohio App.
2d 83, 86. In short, for plaintiffs to have
prevailed on defendants' Civ. R. 50(A) motion
on the issue of fraud, it is essential that
they adduced sufficient evidence on each of
these elements from which reasonable minds
could draw different conclusions.

Plaintiffs' argument on appeal, although
styled as a single assignment of error, in
fact, alleges two different fraudulent acts by
defendants. The first relates to bad faith in
negotiating a settlement of plaintiffs' claims
under the insurance policies. The second
relates to defendants' settlement attempts
which plaintiffs allege were a pretext for
"stringing along" plaintiffs beyond the con-
tractual one-year period in which to commence
suit on the claim concerning the garage.

As a preliminary matter, we note that an
insurer is under a duty to act in good faith
while handling a claim presented by its

insured. Breach of the duty incurs liability for the insurer. Hoskins v. Aetna Life Ins. Co. (1983), 6 Ohio St. 3d 272; Spadafore v. Blue Shield (1985), 21 Ohio App. 3d 201. While the insurer reserves the right to settle a claim, such efforts must be made in good faith. Hart v. Republic Mut. Ins. Co. (1949), 152 Ohio St. 185.

Similarly, where an insurer acts in a manner which delays the filing of an action by its insured beyond the period specified in the contractual limitations clause, such clause may be deemed. waived. Hounshell v. American Stated Ins. Co. (1981), 67 ohio St. 2d 427. Although, as we discuss below, conduct which amounts to less than fraud is sufficient to constitute a waiver, fraudulent conduct is sufficient.

It follows that for plaintiffs to have prevailed on their claim for fraud, they were required to present evidence on the five essential elements. This is true whether the fraud arose from breaches of contract or

from a failure to timely settle the claims.

It is this latter issue which forms the basis for plaintiffs' contention that defendants fraudulently engaged plaintiffs in settlement offers for the purpose of allowing the limitation period to run. In directing a verdict on this issue, the trial court found that plaintiffs had not been "lulled *** into a false sense of complacency *** for the purpose of getting the statute [sic] of limitations *** to run."

Our review of the record supports this finding. Although the evidence may support a reasonable inference that defendants made false statements to plaintiffs regarding their claim of lightning damage to the garage, there is no evidence that defendants knew that such statements were false. The most that can be inferred from the record is that defendants were poor record keepers or that communication among defendants' agents was lacking. The fact that defendants consider plaintiffs' claims as still open is, if anything, evidence of their

good faith. Accordingly, the court below correctly found that defendants did not enter into settlement negotiations on this claim with bad faith.

However, the court below directed the verdict on the issue of defendants' liability for the garage claim primarily because it found that the contractual limitation period for commencing suit had run. Although not assigned by plaintiffs as error, such a verdict is improper under the holding of Hounshell, supra. In finding that summary judgment for the defendant insurer was improper, the Supreme Court of Ohio in Hounshell held:

> "***[T]hat a waiver in these types of cases may occur when the insurer, by its acts or declarations, evidences a recognition of liability under the policy, and the evidence reasonably shows that such expressed recognition of liability and offers of settlement have led the insured to delay in bringing an action on the insurance contract." Id. at 431.

Arguably, the evidence in the case at bar reasonably shows that plaintiffs may have been led to postpone the commencement of suit beyond the twelve-month period because of

defendants' settlement offers regarding the other four claims. Even construing this evidence most strongly in plaintiffs' favor, there is simply no showing that this conduct evinced recognition by defendants of any liability on the claim for lightning damage to the garage.

The record on appeal reflects that there was no evidence before the trial court which indicated that defendants ever admitted liability on this claim. In fact, the testimony and exhibits clearly establish that defendants denied liability on the claim. Whether or not such denial was correct is not the issue. It is, rather, whether defendants ever acknowledged liability on the claim such as to lead plaintiffs into delaying the bringing of an action on the claim. There is nothing before us which remotely suggest that defendants indicated a willingness to pay on the claim. Accordingly, the court correctly directed the verdict on this issue.

Likewise, there is no evidence in the record on appeal which indicates that defendants

attempted to negotiate in bad faith a settlement of the other four claims. Although the evidence conflicts as to whether defendants made false statements to plaintiffs during the course of settlement negotiations, there is nothing to suggest that such statements were made with the requisite knowledge or intent.

It is important to point out that we reach this conclusion based on the evidence which was properly before the court, and not on the basis of the "evidence" plaintiffs present on appeal by way of brief. Plaintiffs make frequent reference to recordings of conversations between plaintiff Eunice Justice and defendants' agents which were surreptitiously typed. We need only mention that not only did the court properly exclude these recordings, but that former R.C. 2933.58 (A) specifically makes such recordings a felony. (R.C. 2933.58 has been amended, effective March 25, 1987 by Am. Sub. S. B. No. 222).

Based on the foregoing, we conclude that the trial court properly directed the verdict

in defendants' favor on the claims for fraud and for property damage to the garage. Accordingly, plaintiffs' first assignment of error is overruled.

As their second assignment of error, plaintiffs asset that the verdict of the jury awarding them $2,355 on the remaining claims for property damages was against the manifest weight of the evidence. Plaintiffs contend that the evidence submitted at trial conclusively established the value of their losses at $37,119.28. In plaintiffs' view, if this evidence is combined with evidence relating to punitive damages, court costs and attorney fees, they are entitled to $800,000.

When reviewing a jury verdict which is claimed to be contrary to the manifest weight of the evidence, the standard to be employed by an appellate court is whether the judgment is supported by some competent, credible evidence, C. E. Morris Co. v. Foley Construction Co. (1978), 54 Ohio St. 2d 279. So, too, where a verdict is claimed to be inadequate,

reversal will lie only where the amount is so grossly inadequate as to be clearly contrary to the weight of the evidence. Litchfield v. Morris (1985), 25 Ohio App. 3d 42; Kavrisz v. Cleveland, Cincinnati, Chicago and St. Louis Ry. Co. (1918), 11 Ohio App. 421, 423; Herman v. Peters Cafeteria, Inc. (1937), 24 Ohio Law Abs. 290, 291. See, also, The Toledo Railways & Light Co. v. Mason (1910), 81 Ohio St. 463. This rule obtains when the verdict is rendered on a contract claim. See, e.g., Carr v. Charter Natl. Life Ins. Co. (1986), 22 Ohio St. 3d 11, 13.

Here, although plaintiffs presented evidence which would arguably support a verdict in the amount they claim, defendants countered this evidence with testimony and exhibits which would support a much lower amount. Since there was some competent,credible evidence before the jury in supoort of the verdict, reversal would be inappropriate. Plaintiffs' second assigned error is, therefore, overruled.

Plaintiffs' third and final assignment of error claims that the trial court erroneously denied plaintiffs' Civ. R. 59 motion for a new trial. As support for this contention, plaintiffs cite the various reasons set out in Civ. R. 59(A)(1)-(5), (7) and (9). Although plaintiffs set out separate arguments regarding each of these sebsections of the civil rule, we will consider them together.

The decision of a trial court to grant or deny a motion for a new trial is solely within its sound discretion. Absent a finding that the court's decision to deny a Civ. R. 59 motion is an abuse of discretion, we will not disturb the judgment. Poske v. Mergl (1959), 169 Ohio St. 70; Verbon v. Pennese (1982), 7 Ohio App. 3d 182, 184. Abuse of discretion under these circumstances implies an unreasonable, arbitrary or unconscionable attitude of the court in ruling on the motion. Poske, supra, at 75.

We cannot say, on the record before us, that the court below manifested an unreasonable,

arbitrary or unconscionable attitude when it overruled plaintiffs' Civ. R. 59 motion. Since the court heard the evidence, saw the witnesses and was able to control the proceedings, it was in the best position to determine whether plaintiffs received a fair trial. We will not disturb its judgment. Plaintiffs third assignment of error is not well-taken and is overruled.

Based on the foregoing, we find that Plaintiffs' three assignments of error are not well-taken and are overruled. The Judgment of the court of common pleas is affirmed.

Judgment affirmed.

WHITESIDE and BOWMAN, JJ., concur.

IN THE SUPREME COURT OF THE STATE OF OHIO

D. K. HURLEY, ET AL,
PLAINTIFF-APPELLANTS

VS. CASE NO. 87-1053

WEST AMERICAN INSURANCE OF OHIO CASUALTY and OHIO CASUALTY COMPANY
DEFENDANT-APPELEES

N O T I C E O F A P P E A L

Plaintiffs, D. K. HURLEY and EUNICE JUSTICE, give notice of appeal to the UNITED STATES SUPREME COURT, Washington, D. C., from the Decision of the Ohio Supreme Court rendered on November 4, 1987 and Entered November 4, 1987. The Entry denying a review of the case was signed by Chief Justice Moyer. The reason for the appeal is questions of law.

By/S/ D.K. Hurley and
D. K. HURLEY

By/S/ Eunice Justice
EUNICE JUSTICE
1216 Highland St.
Columbus, OH 43201
PHONE: 614/291/6256

PROOF OF SERVICE

A copy of the foregoing was mailed this 4th day of December 1987 to Andy Adams, 136 W. Mound, Columbus, OH 43215 by regular U.S. MAIL, POSTAGE PREPAID.

By/S/ Eunice Justice

Filed 12/3/87

THE SUPREME COURT OF OHIO

COLUMBUS

1987 TERM

To wit: November 4, 1987

D. K. Hurley et al.,
Appellants,

Case No. 87-1053

v.

West American Insurance
et al.,
Appellees.

E N T R Y

Upon consideration of the motion for an order directing the Court of Appeals for Franklin County to certify its record, it is ordered by the Court that said motion is overruled.

COSTS:

Motion Fee, $20.00, paid by D. K. Hurley.

By/S/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

I, Marcia J. Mengel, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from the Journal of this Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, on this 4th day of November, 1987.

(clerk) By/S/ Marcia J. Mengel
(Deputy) By/S/ Rita A. Jackson

IN THE FRANKLIN COUNTY COURT OF APPEALS

D. K. HURLEY, ET AL,
PLAINTIFF_APPELLANTS
VS. CASE NO. 86-AP-345

WEST AMERICAN INSURANCE OF
THE OHIO CASUALTY, ET AL
DEFENDANTS-APPELLEES

NOTICE OF APPEAL

Plaintiffs, D. K. HURLEYand EUNICE JUSTICE, give notice of appeal to the United States SUPREME COURT, Washington, D. C. from the Decision of the Fr. Co. Ct. of Appeals which was decided and Entry made May 7, 1987. The reason of appeal is questions of law.

D. K. HURLEY and

EUNICE JUSTICE
1216 Highland St.
Columbus, Ohio 43201
Phone: 614-291-6256

PROOF OF SERVICE

A copy of the foregoing was mailed this 16th day of February 1987 to Andy Adams, 136 Mound, St., Columbus, Ohio 43215 by regular U.S. Mail postage prepaid.

Eunice Justice

D. K. HURLEY

Filed Feb. 16, 1988